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Legislative History – Montana Session Law

Chapter: 327 Session L: 2021
Bill Number: SB 251

Checklist of Bill History

History and Final Status Sheet	☒
Introduced Bill	☒
Fiscal Note	☒
Third Reading Bill	☐
Final Version of Bill	☐

House	Senate
Committee: Business & Labor	Committee: Business, Labor, & Economic Affairs
Hearing Date(s): 3/18/2021	Hearing Date(s): 2/19/2021
Committee Report: 3/26/2021	Committee Report: 2/25/2021
Conference Committee	

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: SK Marshall

Date: 1/31/2025

Notes: Audio/Video recordings can be found here:

<https://sg001-harmony.sliq.net/00309/Harmony/en>

Thank you!

Exported Data

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
04/30/21	Chapter Number Assigned				
04/30/21	(S) Signed by Governor				
04/23/21	(S) Transmitted to Governor				
04/23/21	(H) Signed by Speaker				
04/23/21	(S) Signed by President				
04/21/21	(C) Printed - Enrolled Version Available				
04/21/21	(S) Returned from Enrolling				
04/15/21	(S) Sent to Enrolling				
04/15/21	(S) 3rd Reading Passed as Amended by House		31	19	
04/15/21	(S) 2nd Reading House Amendments Concurred		31	19	
04/15/21	(S) Scheduled for 2nd Reading				
04/01/21	(H) Returned to Senate with Amendments				
04/01/21	(H) 3rd Reading Concurred		63	34	
04/01/21	(H) Scheduled for 3rd Reading				
03/31/21	(H) 2nd Reading Concurred		65	35	
03/31/21	(H) Scheduled for 2nd Reading				
03/29/21	(C) Printed - New Version Available				
03/29/21	(H) Committee Report--Bill Concurred as Amended	(H) Business and Labor			
03/26/21	(H) Committee Executive Action--Bill Concurred as Amended	(H) Business and Labor	12	8	
03/18/21	(H) Hearing	(H) Business and Labor			
03/01/21	(H) First Reading				
03/01/21	(H) Referred to Committee	(H) Business and Labor			
03/01/21	(S) Transmitted to House				
03/01/21	(S) 3rd Reading Passed		31	19	
03/01/21	(S) Scheduled for 3rd Reading				
02/27/21	(S) 2nd Reading Passed		31	19	
02/27/21	(S) Scheduled for 2nd Reading				
02/25/21	(C) Printed - New Version Available				
02/25/21	(S) Committee Report--Bill Passed as Amended	(S) Business, Labor, and Economic Affairs			
02/25/21	(S) Committee Executive Action--Bill Passed as Amended	(S) Business, Labor, and Economic Affairs	7	4	

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
02/24/21	(C) Amendments Available				
02/22/21	(S) Fiscal Note Printed				
02/22/21	(S) Fiscal Note Signed				
02/22/21	(S) Fiscal Note Received				
02/19/21	(S) Hearing	(S) Business, Labor, and Economic Affairs			
02/16/21	(S) Referred to Committee	(S) Business, Labor, and Economic Affairs			
02/15/21	(S) First Reading				
02/15/21	(C) Introduced Bill Text Available Electronically				
02/15/21	(S) Fiscal Note Requested				
02/15/21	(S) Introduced				
02/15/21	(C) Draft Delivered to Requester				
02/15/21	(C) Draft Ready for Delivery				
02/13/21	(C) Executive Director Final Review				
02/13/21	(C) Draft Ready for Delivery				
02/12/21	(C) Draft in Assembly				
02/12/21	(C) Executive Director Review				
02/12/21	(C) Bill Draft Text Available Electronically				
02/12/21	(C) Draft in Final Drafter Review				
02/12/21	(C) Draft in Input/Proofing				
02/10/21	(C) Draft to Drafter - Edit Review				
02/09/21	(C) Draft in Edit				
02/08/21	(C) Draft in Legal Review				
02/08/21	(C) Draft to Requester for Review				
01/07/21	(C) Draft Request Received				



AN ACT GENERALLY REVISING LAWS RELATED TO DAMAGES IN LAWSUITS; PROVIDING THE MEASURE OF DAMAGES RECOVERABLE FOR MEDICAL SERVICES OR TREATMENT IN ACTIONS ARISING FROM BODILY INJURY OR DEATH; PROVIDING THAT DAMAGES IN ANY ACTION ARISING FROM BODILY INJURY OR DEATH EXCEEDING CERTAIN AMOUNTS ARE UNREASONABLE, UNCONSCIONABLE, AND GROSSLY OPPRESSIVE CONTRARY TO SUBSTANTIAL JUSTICE; ABROGATING THE COMMON LAW COLLATERAL SOURCE RULE, COURT DECISIONS, AND ALL PRIOR STATUTES APPLICABLE TO DETERMINING THE AMOUNTS RECOVERABLE BY PLAINTIFFS AS DAMAGES FOR MEDICAL SERVICES OR TREATMENT RELATING TO MEDICAL SERVICES OR TREATMENT; SETTING JURY CONSIDERATIONS FOR AWARDS OF MEDICAL SERVICES OR TREATMENT; PROVIDING DEFINITIONS; AMENDING SECTIONS 27-1-202, 27-1-302, 27-1-307, AND 27-1-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-202, MCA, is amended to read:

"27-1-202. Right to compensatory damages. Every person who suffers detriment from the unlawful act or omission of another may recover from the person in fault a compensation ~~therefor~~ for it in money, which is called damages. The measure of the damages recoverable from the person in fault for the reasonable value of medical services or treatment in actions arising from bodily injury or death is set forth in 27-1-308."

Section 2. Section 27-1-302, MCA, is amended to read:

"27-1-302. Damages to be reasonable. (1) Subject to subsection (2), Damages-damages must in all cases be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages contrary to substantial justice, no more than reasonable damages can be

recovered.

(2) In any action arising from bodily injury or death, damages exceeding amounts provided in 27-1-308(2) are unreasonable, unconscionable, and grossly oppressive contrary to substantial justice."

Section 3. Section 27-1-307, MCA, is amended to read:

"27-1-307. Definitions. As used in 27-1-308 and this section:

(1) "Collateral source" means a payment for something that is later included in a tort award and that is made to or for the benefit of a plaintiff or is otherwise available to the plaintiff:

(a) for medical expenses and disability payments under the federal Social Security Act, any federal, state, or local income disability act, or any other public program;

(b) under any health, sickness, or income disability insurance or automobile accident insurance that provides health benefits or income disability coverage, and any other similar insurance benefits available to the plaintiff, except life insurance;

(c) under any contract or agreement of any person, group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except gifts or gratuitous contributions or assistance;

(d) any contractual or voluntary wage continuation plan provided by an employer or other system intended to provide wages during a period of disability; and

(e) any other source, except the assets of the plaintiff or of the plaintiff's immediate family if the plaintiff is obligated to repay a member of the plaintiff's immediate family.

(2) "Health care provider" includes hospitals, institutions, laboratories, doctors, physicians, optometrists, dentists, nurses, therapists, and any other medical or health care facilities, professionals or persons who diagnose, evaluate, treat, or otherwise deliver medical services or treatment to a plaintiff.

(3) (a) "Medical services or treatment" means any actions taken by a health care provider to observe, identify, diagnose, stabilize, address, ameliorate, correct, remedy, rehabilitate, manage, combat, or care for a plaintiff's injury, condition, disease, or disorder, or symptoms of a plaintiff's injury, condition, disease, or disorder.

(b) The term includes any equipment, facilities, medicines, drugs, prescriptions, devices, or products

provided or applied to a plaintiff by a health care provider or consumed by a plaintiff at a health care provider's direction.

~~(2)~~(4) "Person" includes individuals, corporations, associations, societies, firms, partnerships, joint-stock companies, government entities, political subdivisions, and any other entity or aggregate of individuals.

~~(3)~~(5) (a) "Plaintiff" means a person who alleges to have sustained bodily injury, or on whose behalf recovery for bodily injury or death is sought, or who would have a beneficial, legal, or equitable interest in a recovery.

(b) The term includes:

- (i) a legal representative;
- (ii) a person with a wrongful death or surviving cause of action;
- (iii) a person seeking recovery on a claim for loss of consortium, society, assistance, companionship, or services; and
- (iv) any other person whose right of recovery or whose claim or status is derivative of one who has sustained bodily injury or death."

Section 4. Section 27-1-308, MCA, is amended to read:

"27-1-308. ~~Collateral source reductions in~~ Allowed recovery and permissible evidence -- reasonable value of medical or health care services or treatment -- actions arising from bodily injury or death -- subrogation rights. (1) (a) The purpose of this section is to abrogate the common law collateral source rule, court decisions, and all prior statutes applicable to determining the amounts recoverable by plaintiffs as damages for medical services or treatment.

(b) This section does not modify duties owed in accordance with 33-18-201.

(2) In an action arising from bodily injury or death when the total award against all defendants is in excess of \$50,000 and the plaintiff will be fully compensated for the plaintiff's damages, exclusive of court costs and attorney fees, a plaintiff's recovery must be reduced by any amount paid or payable from a collateral source that does not have a subrogation right, a plaintiff's recovery may not exceed amounts actually:

(a) paid by or on behalf of the plaintiff to health care providers that rendered reasonable and necessary medical services or treatment to the plaintiff;

(b) necessary to satisfy charges that have been incurred and at the time of trial are still owing and payable to health care providers for reasonable and necessary medical services or treatment rendered to the plaintiff; and

(c) necessary to provide for any future reasonable and necessary medical services or treatment for the plaintiff.

~~(2) Before an insurance policy payment is used to reduce an award under subsection (1), the following amounts must be deducted from the amount of the insurance policy payment:~~

~~(a) the amount the plaintiff paid for the 5 years prior to the date of injury;~~

~~(b) the amount the plaintiff paid from the date of injury to the date of judgment; and~~

~~(c) the present value of the amount the plaintiff is obligated to pay to keep the policy in force for the period for which any reduction of an award is made pursuant to subsection (3).~~

(3) The jury shall determine its award for the reasonable value of medical services or treatment without consideration of any charges for medical services or treatment that were included on health care providers' bills but resolved by way of contractual discount, price reduction, disallowance, gift, write-off, or otherwise not paid collateral sources. After the jury determines its award, reduction of the award must be made by the trial judge at a hearing and upon a separate submission of evidence relevant to the existence and amount of collateral sources. Evidence is admissible to establish the reasonable value of medical services or treatment is limited to evidence identifying the amounts actually:

at the hearing to show that the plaintiff has been or may be reimbursed from a collateral source that does not have a subrogation right. If the trial judge finds that, at the time of hearing, it is not reasonably determinable whether or in what amount a benefit from a collateral source will be payable, the judge shall:

~~(a) order any person against whom an award was rendered and who claims a deduction under this section to make a deposit into court of the disputed amount, at interest~~

(a) paid by or on behalf of the plaintiff, regardless of the source of payment, to satisfy the financial obligation for medical services or treatment that the plaintiff received; and

~~(b) reduce the award by the amount deposited. The amount deposited and any interest on that amount are subject to the further order of the court, pursuant to the requirements of this section.~~ necessary to satisfy the financial obligation for medical services or treatment rendered to the plaintiff that have been incurred

but not yet satisfied. This evidence may not include any reference to sums that exceed the amount for which the unpaid charges could be satisfied if submitted to any health insurance covering the plaintiff or any public or government-sponsored health care benefit program for which the plaintiff is eligible, regardless of whether the incurred but not yet satisfied charges have been or will be submitted to the plaintiff's health insurance or public or government-sponsored health care benefit program.

(c) necessary to satisfy the financial obligation for any reasonable and necessary future medical services or treatment of the plaintiff. This evidence may not include any reference to sums that exceed the amount for which the future charges of health care providers could be satisfied if submitted to any health insurance covering the plaintiff or any public or government-sponsored health care benefit program for which the plaintiff is eligible.

(4) If prior to trial a defendant, a defendant's insurer or authorized representative, or any combination of the three, pays any part of the financial obligation for medical services or treatment provided to the plaintiff, then prior to the entry of judgment the court shall reduce the sum awarded to the plaintiff at trial by the amount of the payment or other collateral source as defined in 27-1-307(1).

(5) Except for subrogation rights specifically granted by state or federal law, law or provided by contract, there is no right to subrogation for any amount paid or payable to a plaintiff from a collateral source if for an award is reduced by that amount under entered as provided in subsection (1) (2)."

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Applicability. [This act] applies to claims that accrue on or after [the effective date of this act].

- END -

I hereby certify that the within bill,
SB 251, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2021.

Speaker of the House

Signed this _____ day
of _____, 2021.

SENATE BILL NO. 251

INTRODUCED BY C. SMITH

AN ACT GENERALLY REVISING LAWS RELATED TO DAMAGES IN LAWSUITS; PROVIDING THE MEASURE OF DAMAGES RECOVERABLE FOR MEDICAL SERVICES OR TREATMENT IN ACTIONS ARISING FROM BODILY INJURY OR DEATH; PROVIDING THAT DAMAGES IN ANY ACTION ARISING FROM BODILY INJURY OR DEATH EXCEEDING CERTAIN AMOUNTS ARE UNREASONABLE, UNCONSCIONABLE, AND GROSSLY OPPRESSIVE CONTRARY TO SUBSTANTIAL JUSTICE; ABROGATING THE COMMON LAW COLLATERAL SOURCE RULE, COURT DECISIONS, AND ALL PRIOR STATUTES APPLICABLE TO DETERMINING THE AMOUNTS RECOVERABLE BY PLAINTIFFS AS DAMAGES FOR MEDICAL SERVICES OR TREATMENT RELATING TO MEDICAL SERVICES OR TREATMENT; SETTING JURY CONSIDERATIONS FOR AWARDS OF MEDICAL SERVICES OR TREATMENT; PROVIDING DEFINITIONS; AMENDING SECTIONS 27-1-202, 27-1-302, 27-1-307, AND 27-1-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

SENATE BILL NO. 251

INTRODUCED BY C. SMITH

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO DAMAGES IN LAWSUITS; PROVIDING THE MEASURE OF DAMAGES RECOVERABLE FOR MEDICAL SERVICES OR TREATMENT IN ACTIONS ARISING FROM BODILY INJURY OR DEATH; PROVIDING THAT DAMAGES IN ANY ACTION ARISING FROM BODILY INJURY OR DEATH EXCEEDING CERTAIN AMOUNTS ARE UNREASONABLE, UNCONSCIONABLE, AND GROSSLY OPPRESSIVE CONTRARY TO SUBSTANTIAL JUSTICE; ABROGATING THE COMMON LAW COLLATERAL SOURCE RULE, COURT DECISIONS, AND ALL PRIOR STATUTES APPLICABLE TO DETERMINING THE AMOUNTS RECOVERABLE BY PLAINTIFFS AS DAMAGES FOR MEDICAL SERVICES OR TREATMENT RELATING TO MEDICAL SERVICES OR TREATMENT; SETTING JURY CONSIDERATIONS FOR AWARDS OF MEDICAL SERVICES OR TREATMENT; PROVIDING DEFINITIONS; AMENDING SECTIONS 27-1-202, 27-1-302, 27-1-307, AND 27-1-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-202, MCA, is amended to read:

"27-1-202. Right to compensatory damages. Every person who suffers detriment from the unlawful act or omission of another may recover from the person in fault a compensation ~~therefor~~ for it in money, which is called damages. The measure of the damages recoverable from the person in fault for the reasonable value of medical services or treatment in actions arising from bodily injury or death is set forth in 27-1-308."

Section 2. Section 27-1-302, MCA, is amended to read:

"27-1-302. Damages to be reasonable. (1) Subject to subsection (2), Damages—damages must in all cases be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages contrary to substantial justice, no more than reasonable damages can be recovered.

1 (2) In any action arising from bodily injury or death, damages exceeding amounts provided in 27-1-
2 308(2) are unreasonable, unconscionable, and grossly oppressive contrary to substantial justice."

3
4 **Section 3.** Section 27-1-307, MCA, is amended to read:

5 **"27-1-307. Definitions.** As used in 27-1-308 and this section:

6 (1) "Collateral source" means a payment for something that is later included in a tort award and that is
7 made to or for the benefit of a plaintiff or is otherwise available to the plaintiff:

8 (a) for medical expenses and disability payments under the federal Social Security Act, any federal,
9 state, or local income disability act, or any other public program;

10 (b) under any health, sickness, or income disability insurance or automobile accident insurance that
11 provides health benefits or income disability coverage, and any other similar insurance benefits available to the
12 plaintiff, except life insurance;

13 (c) under any contract or agreement of any person, group, organization, partnership, or corporation to
14 provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except gifts
15 or gratuitous contributions or assistance;

16 (d) any contractual or voluntary wage continuation plan provided by an employer or other system
17 intended to provide wages during a period of disability; and

18 (e) any other source, except the assets of the plaintiff or of the plaintiff's immediate family if the
19 plaintiff is obligated to repay a member of the plaintiff's immediate family.

20 (2) "Health care provider" includes hospitals, institutions, laboratories, doctors, physicians,
21 optometrists, dentists, nurses, therapists, and any other medical or health care facilities, professionals or
22 persons who diagnose, evaluate, treat, or otherwise deliver medical services or treatment to a plaintiff.

23 (3) (a) "Medical services or treatment" means any actions taken by a health care provider to observe,
24 identify, diagnose, stabilize, address, ameliorate, correct, remedy, rehabilitate, manage, combat, or care for a
25 plaintiff's injury, condition, disease, or disorder, or symptoms of a plaintiff's injury, condition, disease, or
26 disorder.

27 (b) The term includes any equipment, facilities, medicines, drugs, prescriptions, devices, or products
28 provided or applied to a plaintiff by a health care provider or consumed by a plaintiff at a health care provider's

1 direction.

2 ~~(2)(4)~~ "Person" includes individuals, corporations, associations, societies, firms, partnerships, joint-
3 stock companies, government entities, political subdivisions, and any other entity or aggregate of individuals.

4 ~~(3)(5)~~ (a) "Plaintiff" means a person who alleges to have sustained bodily injury, or on whose behalf
5 recovery for bodily injury or death is sought, or who would have a beneficial, legal, or equitable interest in a
6 recovery.

7 (b) The term includes:

8 (i) a legal representative;

9 (ii) a person with a wrongful death or surviving cause of action;

10 (iii) a person seeking recovery on a claim for loss of consortium, society, assistance, companionship,
11 or services; and

12 (iv) any other person whose right of recovery or whose claim or status is derivative of one who has
13 sustained bodily injury or death."
14

15 **Section 4.** Section 27-1-308, MCA, is amended to read:

16 **"27-1-308. ~~Collateral source reductions in~~ Allowed recovery and permissible evidence --**
17 **reasonable value of medical or health care services or treatment -- actions arising from bodily injury or**
18 **death -- subrogation rights.** (1) (A) The purpose of this section is to abrogate the common law collateral
19 source rule, court decisions, and all prior statutes applicable to determining the amounts recoverable by
20 plaintiffs as damages for medical services or treatment.

21 (B) THIS SECTION DOES NOT MODIFY DUTIES OWED IN ACCORDANCE WITH 33-18-201.

22 (2) In an action arising from bodily injury or death ~~when the total award against all defendants is in~~
23 ~~excess of \$50,000 and the plaintiff will be fully compensated for the plaintiff's damages, exclusive of court costs~~
24 ~~and attorney fees, a plaintiff's recovery must be reduced by any amount paid or payable from a collateral~~
25 ~~source that does not have a subrogation right, a plaintiff's recovery may not exceed amounts actually:~~

26 (a) paid by or on behalf of the plaintiff to health care providers that rendered reasonable and
27 necessary medical services or treatment to the plaintiff;

28 (b) necessary to satisfy charges that have been incurred and at the time of trial are still owing and

1 payable to health care providers for reasonable and necessary medical services or treatment rendered to the
2 plaintiff; and

3 (c) necessary to provide for any future reasonable and necessary medical services or treatment for
4 the plaintiff.

5 ~~(2) Before an insurance policy payment is used to reduce an award under subsection (1), the~~
6 ~~following amounts must be deducted from the amount of the insurance policy payment:~~

7 ~~(a) the amount the plaintiff paid for the 5 years prior to the date of injury;~~

8 ~~(b) the amount the plaintiff paid from the date of injury to the date of judgment; and~~

9 ~~(c) the present value of the amount the plaintiff is obligated to pay to keep the policy in force for the~~
10 ~~period for which any reduction of an award is made pursuant to subsection (3).~~

11 (3) The jury shall determine its award for the reasonable value of medical services or treatment
12 without consideration of any charges for medical services or treatment that were included on health care
13 providers' bills but resolved by way of contractual discount, price reduction, disallowance, gift, write-off, or
14 otherwise not paid collateral sources. After the jury determines its award, reduction of the award must be made
15 by the trial judge at a hearing and upon a separate submission of evidence relevant to the existence and
16 amount of collateral sources. Evidence SUBJECT TO SUBSECTION (6), EVIDENCE EVIDENCE is admissible to
17 establish the reasonable value of medical services or treatment is limited to evidence identifying the amounts
18 actually:

19 at the hearing to show that the plaintiff has been or may be reimbursed from a collateral source that
20 does not have a subrogation right. If the trial judge finds that, at the time of hearing, it is not reasonably
21 determinable whether or in what amount a benefit from a collateral source will be payable, the judge shall:

22 ~~(a) order any person against whom an award was rendered and who claims a deduction under this~~
23 ~~section to make a deposit into court of the disputed amount, at interest~~

24 (a) paid by or on behalf of the plaintiff, regardless of the source of payment, to satisfy the financial
25 obligation for medical services or treatment that the plaintiff received; and

26 ~~(b) reduce the award by the amount deposited. The amount deposited and any interest on that~~
27 ~~amount are subject to the further order of the court, pursuant to the requirements of this section. necessary to~~
28 satisfy the financial obligation for medical services or treatment rendered to the plaintiff that have been incurred

1 but not yet satisfied. This evidence may not include any reference to sums that exceed the amount for which
2 the unpaid charges could be satisfied if submitted to any health insurance covering the plaintiff or any public or
3 government-sponsored health care benefit program for which the plaintiff is eligible, regardless of whether the
4 incurred but not yet satisfied charges have been or will be submitted to the plaintiff's health insurance or public
5 or government-sponsored health care benefit program. If the plaintiff is not covered by any health insurance
6 and is not eligible for any public or government-sponsored health care benefit program, evidence of the
7 reasonable value of medical services or treatment incurred but not yet satisfied is limited to the medicare
8 reimbursement rate in effect at the time the plaintiff's services or treatment occurred for the specific medical
9 services or treatment rendered to the plaintiff.

10 (c) necessary to satisfy the financial obligation for any reasonable and necessary future medical
11 services or treatment of the plaintiff. This evidence may not include any reference to sums that exceed the
12 amount for which the future charges of health care providers could be satisfied if submitted to any health
13 insurance covering the plaintiff or any public or government-sponsored health care benefit program for which
14 the plaintiff is eligible. If the plaintiff is not covered by any health insurance and is not eligible for any public or
15 government-sponsored health care benefit program, evidence of the reasonable present value of any future
16 reasonable and necessary medical services or treatment is limited to the medicare reimbursement rate in effect
17 at the time of trial for the reasonable and necessary future medical services or treatment of the plaintiff.

18 (4) If prior to trial a defendant, a defendant's insurer or authorized representative, or any combination
19 of the three, pays any part of the financial obligation for medical services or treatment provided to the plaintiff,
20 then prior to the entry of judgment the court shall reduce the sum awarded to the plaintiff at trial by the amount
21 of the payment or other collateral source as defined in 27-1-307(1).

22 (5) Except for subrogation rights specifically granted by state or federal law, law or provided by
23 contract, there is no right to subrogation for any amount paid or payable to a plaintiff from a collateral source if
24 for an award is reduced by that amount under entered as provided in subsection (1) (2).

25 (6) A HEALTH CARE PROVIDER MAY NOT ATTEMPT TO RECOVER MORE THAN THE AMOUNTS ALLOWED AS
26 DAMAGES UNDER THIS SECTION FROM A PLAINTIFF."

27
28 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

2 NEW SECTION. **Section 6. Applicability.** [This act] applies to claims that accrue on or after [the
3 effective date of this act].

4 - END -

SENATE BILL NO. 251

INTRODUCED BY C. SMITH

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO DAMAGES IN LAWSUITS; PROVIDING THE MEASURE OF DAMAGES RECOVERABLE FOR MEDICAL SERVICES OR TREATMENT IN ACTIONS ARISING FROM BODILY INJURY OR DEATH; PROVIDING THAT DAMAGES IN ANY ACTION ARISING FROM BODILY INJURY OR DEATH EXCEEDING CERTAIN AMOUNTS ARE UNREASONABLE, UNCONSCIONABLE, AND GROSSLY OPPRESSIVE CONTRARY TO SUBSTANTIAL JUSTICE; ABROGATING THE COMMON LAW COLLATERAL SOURCE RULE, COURT DECISIONS, AND ALL PRIOR STATUTES APPLICABLE TO DETERMINING THE AMOUNTS RECOVERABLE BY PLAINTIFFS AS DAMAGES FOR MEDICAL SERVICES OR TREATMENT RELATING TO MEDICAL SERVICES OR TREATMENT; SETTING JURY CONSIDERATIONS FOR AWARDS OF MEDICAL SERVICES OR TREATMENT; PROVIDING DEFINITIONS; AMENDING SECTIONS 27-1-202, 27-1-302, 27-1-307, AND 27-1-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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2 308(2) are unreasonable, unconscionable, and grossly oppressive contrary to substantial justice."

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7 made to or for the benefit of a plaintiff or is otherwise available to the plaintiff:

8 (a) for medical expenses and disability payments under the federal Social Security Act, any federal,
9 state, or local income disability act, or any other public program;

10 (b) under any health, sickness, or income disability insurance or automobile accident insurance that
11 provides health benefits or income disability coverage, and any other similar insurance benefits available to the
12 plaintiff, except life insurance;

13 (c) under any contract or agreement of any person, group, organization, partnership, or corporation to
14 provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except gifts
15 or gratuitous contributions or assistance;

16 (d) any contractual or voluntary wage continuation plan provided by an employer or other system
17 intended to provide wages during a period of disability; and

18 (e) any other source, except the assets of the plaintiff or of the plaintiff's immediate family if the
19 plaintiff is obligated to repay a member of the plaintiff's immediate family.

20 (2) "Health care provider" includes hospitals, institutions, laboratories, doctors, physicians,
21 optometrists, dentists, nurses, therapists, and any other medical or health care facilities, professionals or
22 persons who diagnose, evaluate, treat, or otherwise deliver medical services or treatment to a plaintiff.

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24 identify, diagnose, stabilize, address, ameliorate, correct, remedy, rehabilitate, manage, combat, or care for a
25 plaintiff's injury, condition, disease, or disorder, or symptoms of a plaintiff's injury, condition, disease, or
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28 provided or applied to a plaintiff by a health care provider or consumed by a plaintiff at a health care provider's

1 direction.

2 ~~(2)(4)~~ "Person" includes individuals, corporations, associations, societies, firms, partnerships, joint-
3 stock companies, government entities, political subdivisions, and any other entity or aggregate of individuals.

4 ~~(3)(5)~~ (a) "Plaintiff" means a person who alleges to have sustained bodily injury, or on whose behalf
5 recovery for bodily injury or death is sought, or who would have a beneficial, legal, or equitable interest in a
6 recovery.

7 (b) The term includes:

8 (i) a legal representative;

9 (ii) a person with a wrongful death or surviving cause of action;

10 (iii) a person seeking recovery on a claim for loss of consortium, society, assistance, companionship,
11 or services; and

12 (iv) any other person whose right of recovery or whose claim or status is derivative of one who has
13 sustained bodily injury or death."
14

15 **Section 4.** Section 27-1-308, MCA, is amended to read:

16 **"27-1-308. ~~Collateral source reductions in~~ Allowed recovery and permissible evidence --**
17 **reasonable value of medical or health care services or treatment -- actions arising from bodily injury or**
18 **death -- subrogation rights.** (1) (A) The purpose of this section is to abrogate the common law collateral
19 source rule, court decisions, and all prior statutes applicable to determining the amounts recoverable by
20 plaintiffs as damages for medical services or treatment.

21 (B) THIS SECTION DOES NOT MODIFY DUTIES OWED IN ACCORDANCE WITH 33-18-201.

22 (2) In an action arising from bodily injury or death ~~when the total award against all defendants is in~~
23 ~~excess of \$50,000 and the plaintiff will be fully compensated for the plaintiff's damages, exclusive of court costs~~
24 ~~and attorney fees, a plaintiff's recovery must be reduced by any amount paid or payable from a collateral~~
25 ~~source that does not have a subrogation right, a plaintiff's recovery may not exceed amounts actually:~~

26 (a) paid by or on behalf of the plaintiff to health care providers that rendered reasonable and
27 necessary medical services or treatment to the plaintiff;

28 (b) necessary to satisfy charges that have been incurred and at the time of trial are still owing and

1 payable to health care providers for reasonable and necessary medical services or treatment rendered to the
2 plaintiff; and

3 (c) necessary to provide for any future reasonable and necessary medical services or treatment for
4 the plaintiff.

5 ~~(2) Before an insurance policy payment is used to reduce an award under subsection (1), the~~
6 ~~following amounts must be deducted from the amount of the insurance policy payment:~~

7 ~~(a) the amount the plaintiff paid for the 5 years prior to the date of injury;~~

8 ~~(b) the amount the plaintiff paid from the date of injury to the date of judgment; and~~

9 ~~(c) the present value of the amount the plaintiff is obligated to pay to keep the policy in force for the~~
10 ~~period for which any reduction of an award is made pursuant to subsection (3).~~

11 (3) The jury shall determine its award for the reasonable value of medical services or treatment
12 without consideration of any charges for medical services or treatment that were included on health care
13 providers' bills but resolved by way of contractual discount, price reduction, disallowance, gift, write-off, or
14 otherwise not paid collateral sources. After the jury determines its award, reduction of the award must be made
15 by the trial judge at a hearing and upon a separate submission of evidence relevant to the existence and
16 amount of collateral sources. Evidence SUBJECT TO SUBSECTION (6), EVIDENCE is admissible to establish the
17 reasonable value of medical services or treatment is limited to evidence identifying the amounts actually:

18 at the hearing to show that the plaintiff has been or may be reimbursed from a collateral source that
19 does not have a subrogation right. If the trial judge finds that, at the time of hearing, it is not reasonably
20 determinable whether or in what amount a benefit from a collateral source will be payable, the judge shall:

21 ~~(a) order any person against whom an award was rendered and who claims a deduction under this~~
22 ~~section to make a deposit into court of the disputed amount, at interest~~

23 (a) paid by or on behalf of the plaintiff, regardless of the source of payment, to satisfy the financial
24 obligation for medical services or treatment that the plaintiff received; and

25 ~~(b) reduce the award by the amount deposited. The amount deposited and any interest on that~~
26 ~~amount are subject to the further order of the court, pursuant to the requirements of this section. necessary to~~
27 satisfy the financial obligation for medical services or treatment rendered to the plaintiff that have been incurred
28 but not yet satisfied. This evidence may not include any reference to sums that exceed the amount for which

1 the unpaid charges could be satisfied if submitted to any health insurance covering the plaintiff or any public or
2 government-sponsored health care benefit program for which the plaintiff is eligible, regardless of whether the
3 incurred but not yet satisfied charges have been or will be submitted to the plaintiff's health insurance or public
4 or government-sponsored health care benefit program. If the plaintiff is not covered by any health insurance
5 and is not eligible for any public or government-sponsored health care benefit program, evidence of the
6 reasonable value of medical services or treatment incurred but not yet satisfied is limited to the medicare
7 reimbursement rate in effect at the time the plaintiff's services or treatment occurred for the specific medical
8 services or treatment rendered to the plaintiff.

9 (c) necessary to satisfy the financial obligation for any reasonable and necessary future medical
10 services or treatment of the plaintiff. This evidence may not include any reference to sums that exceed the
11 amount for which the future charges of health care providers could be satisfied if submitted to any health
12 insurance covering the plaintiff or any public or government-sponsored health care benefit program for which
13 the plaintiff is eligible. If the plaintiff is not covered by any health insurance and is not eligible for any public or
14 government-sponsored health care benefit program, evidence of the reasonable present value of any future
15 reasonable and necessary medical services or treatment is limited to the medicare reimbursement rate in effect
16 at the time of trial for the reasonable and necessary future medical services or treatment of the plaintiff.

17 (4) If prior to trial a defendant, a defendant's insurer or authorized representative, or any combination
18 of the three, pays any part of the financial obligation for medical services or treatment provided to the plaintiff,
19 then prior to the entry of judgment the court shall reduce the sum awarded to the plaintiff at trial by the amount
20 of the payment or other collateral source as defined in 27-1-307(1).

21 (5) Except for subrogation rights specifically granted by state or federal law, law or provided by
22 contract, there is no right to subrogation for any amount paid or payable to a plaintiff from a collateral source if
23 for an award is reduced by that amount under entered as provided in subsection (1) (2).

24 (6) A HEALTH CARE PROVIDER MAY NOT ATTEMPT TO RECOVER MORE THAN THE AMOUNTS ALLOWED AS
25 DAMAGES UNDER THIS SECTION FROM A PLAINTIFF."

26
27 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.
28

1 NEW SECTION. **Section 6. Applicability.** [This act] applies to claims that accrue on or after [the
2 effective date of this act].

3 - END -

SENATE BILL NO. 251

INTRODUCED BY C. SMITH

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO DAMAGES IN LAWSUITS; PROVIDING THE MEASURE OF DAMAGES RECOVERABLE FOR MEDICAL SERVICES OR TREATMENT IN ACTIONS ARISING FROM BODILY INJURY OR DEATH; PROVIDING THAT DAMAGES IN ANY ACTION ARISING FROM BODILY INJURY OR DEATH EXCEEDING CERTAIN AMOUNTS ARE UNREASONABLE, UNCONSCIONABLE, AND GROSSLY OPPRESSIVE CONTRARY TO SUBSTANTIAL JUSTICE; ABROGATING THE COMMON LAW COLLATERAL SOURCE RULE, COURT DECISIONS, AND ALL PRIOR STATUTES APPLICABLE TO DETERMINING THE AMOUNTS RECOVERABLE BY PLAINTIFFS AS DAMAGES FOR MEDICAL SERVICES OR TREATMENT RELATING TO MEDICAL SERVICES OR TREATMENT; SETTING JURY CONSIDERATIONS FOR AWARDS OF MEDICAL SERVICES OR TREATMENT; PROVIDING DEFINITIONS; AMENDING SECTIONS 27-1-202, 27-1-302, 27-1-307, AND 27-1-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-202, MCA, is amended to read:

"27-1-202. Right to compensatory damages. Every person who suffers detriment from the unlawful act or omission of another may recover from the person in fault a compensation ~~therefor~~ for it in money, which is called damages. The measure of the damages recoverable from the person in fault for the reasonable value of medical services or treatment in actions arising from bodily injury or death is set forth in 27-1-308."

Section 2. Section 27-1-302, MCA, is amended to read:

"27-1-302. Damages to be reasonable. (1) Subject to subsection (2), Damages—damages must in all cases be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages contrary to substantial justice, no more than reasonable damages can be recovered.

1 (2) In any action arising from bodily injury or death, damages exceeding amounts provided in 27-1-
2 308(2) are unreasonable, unconscionable, and grossly oppressive contrary to substantial justice."

3
4 **Section 3.** Section 27-1-307, MCA, is amended to read:

5 **"27-1-307. Definitions.** As used in 27-1-308 and this section:

6 (1) "Collateral source" means a payment for something that is later included in a tort award and that is
7 made to or for the benefit of a plaintiff or is otherwise available to the plaintiff:

8 (a) for medical expenses and disability payments under the federal Social Security Act, any federal,
9 state, or local income disability act, or any other public program;

10 (b) under any health, sickness, or income disability insurance or automobile accident insurance that
11 provides health benefits or income disability coverage, and any other similar insurance benefits available to the
12 plaintiff, except life insurance;

13 (c) under any contract or agreement of any person, group, organization, partnership, or corporation to
14 provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except gifts
15 or gratuitous contributions or assistance;

16 (d) any contractual or voluntary wage continuation plan provided by an employer or other system
17 intended to provide wages during a period of disability; and

18 (e) any other source, except the assets of the plaintiff or of the plaintiff's immediate family if the
19 plaintiff is obligated to repay a member of the plaintiff's immediate family.

20 (2) "Health care provider" includes hospitals, institutions, laboratories, doctors, physicians,
21 optometrists, dentists, nurses, therapists, and any other medical or health care facilities, professionals or
22 persons who diagnose, evaluate, treat, or otherwise deliver medical services or treatment to a plaintiff.

23 (3) (a) "Medical services or treatment" means any actions taken by a health care provider to observe,
24 identify, diagnose, stabilize, address, ameliorate, correct, remedy, rehabilitate, manage, combat, or care for a
25 plaintiff's injury, condition, disease, or disorder, or symptoms of a plaintiff's injury, condition, disease, or
26 disorder.

27 (b) The term includes any equipment, facilities, medicines, drugs, prescriptions, devices, or products
28 provided or applied to a plaintiff by a health care provider or consumed by a plaintiff at a health care provider's

1 direction.

2 ~~(2)(4)~~ "Person" includes individuals, corporations, associations, societies, firms, partnerships, joint-
3 stock companies, government entities, political subdivisions, and any other entity or aggregate of individuals.

4 ~~(3)(5)~~ (a) "Plaintiff" means a person who alleges to have sustained bodily injury, or on whose behalf
5 recovery for bodily injury or death is sought, or who would have a beneficial, legal, or equitable interest in a
6 recovery.

7 (b) The term includes:

8 (i) a legal representative;

9 (ii) a person with a wrongful death or surviving cause of action;

10 (iii) a person seeking recovery on a claim for loss of consortium, society, assistance, companionship,
11 or services; and

12 (iv) any other person whose right of recovery or whose claim or status is derivative of one who has
13 sustained bodily injury or death."
14

15 **Section 4.** Section 27-1-308, MCA, is amended to read:

16 **"27-1-308. ~~Collateral source reductions in~~ Allowed recovery and permissible evidence --**
17 **reasonable value of medical or health care services or treatment -- actions arising from bodily injury or**
18 **death -- subrogation rights.** (1) The purpose of this section is to abrogate the common law collateral source
19 rule, court decisions, and all prior statutes applicable to determining the amounts recoverable by plaintiffs as
20 damages for medical services or treatment.

21 (2) In an action arising from bodily injury or death when the total award against all defendants is in
22 excess of \$50,000 and the plaintiff will be fully compensated for the plaintiff's damages, exclusive of court costs
23 and attorney fees, a plaintiff's recovery must be reduced by any amount paid or payable from a collateral
24 source that does not have a subrogation right, a plaintiff's recovery may not exceed amounts actually:

25 (a) paid by or on behalf of the plaintiff to health care providers that rendered reasonable and
26 necessary medical services or treatment to the plaintiff;

27 (b) necessary to satisfy charges that have been incurred and at the time of trial are still owing and
28 payable to health care providers for reasonable and necessary medical services or treatment rendered to the

1 plaintiff; and

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3 the plaintiff.

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5 ~~following amounts must be deducted from the amount of the insurance policy payment:~~

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9 ~~period for which any reduction of an award is made pursuant to subsection (3).~~

10 (3) The jury shall determine its award for the reasonable value of medical services or treatment
11 without consideration of any charges for medical services or treatment that were included on health care
12 providers' bills but resolved by way of contractual discount, price reduction, disallowance, gift, write-off, or
13 otherwise not paid collateral sources. After the jury determines its award, reduction of the award must be made
14 by the trial judge at a hearing and upon a separate submission of evidence relevant to the existence and
15 amount of collateral sources. Evidence is admissible to establish the reasonable value of medical services or
16 treatment is limited to evidence identifying the amounts actually:

17 ~~at the hearing to show that the plaintiff has been or may be reimbursed from a collateral source that~~
18 ~~does not have a subrogation right. If the trial judge finds that, at the time of hearing, it is not reasonably~~
19 ~~determinable whether or in what amount a benefit from a collateral source will be payable, the judge shall:~~

20 ~~(a) order any person against whom an award was rendered and who claims a deduction under this~~
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22 (a) paid by or on behalf of the plaintiff, regardless of the source of payment, to satisfy the financial
23 obligation for medical services or treatment that the plaintiff received; and

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28 the unpaid charges could be satisfied if submitted to any health insurance covering the plaintiff or any public or

government-sponsored health care benefit program for which the plaintiff is eligible, regardless of whether the incurred but not yet satisfied charges have been or will be submitted to the plaintiff's health insurance or public or government-sponsored health care benefit program. If the plaintiff is not covered by any health insurance and is not eligible for any public or government-sponsored health care benefit program, evidence of the reasonable value of medical services or treatment incurred but not yet satisfied is limited to the medicare reimbursement rate in effect at the time the plaintiff's services or treatment occurred for the specific medical services or treatment rendered to the plaintiff.

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(4) If prior to trial a defendant, a defendant's insurer or authorized representative, or any combination of the three, pays any part of the financial obligation for medical services or treatment provided to the plaintiff, then prior to the entry of judgment the court shall reduce the sum awarded to the plaintiff at trial by the amount of the payment or other collateral source as defined in 27-1-307(1).

(5) Except for subrogation rights specifically granted by state or federal law, law or provided by contract, there is no right to subrogation for any amount paid or payable to a plaintiff from a collateral source if for an award is reduced by that amount under entered as provided in subsection (1) (2)."

NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 6. Applicability. [This act] applies to claims that accrue on or after [the effective date of this act].

1

- END -



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2023 Biennium

Bill #	SB0251	Title:	Generally revise civil liability laws relating to damages
Primary Sponsor:	Smith, Cary	Status:	As Introduced

- | | | |
|---|--|--|
| ☐ Significant Local Gov Impact | ☐ Needs to be included in HB 2 | ☐ Technical Concerns |
| ☐ Included in the Executive Budget | ☐ Significant Long-Term Impacts | ☐ Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2022</u> <u>Difference</u>	<u>FY 2023</u> <u>Difference</u>	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>
Expenditures:				
General Fund	\$0	\$0	\$0	\$0
Revenue:				
General Fund	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

Description of fiscal impact: SB 251 proposes numerous amendments to damages statutes for lawsuits involving injuries that require medical care. All the proposed amendments reduce the likely total damages a liable defendant will have to pay. Since the bill limits/determines recoverable damages in a settlement, there is no measurable fiscal impact to the state.

FISCAL ANALYSIS

Assumptions:

Department of Administration

Health Care and Benefits Division

- SB 251 generally revises the laws related to damages in lawsuits, including damages recoverable for medical services or treatment.
- SB 251 does not impact the benefits coverage or payment of claims by the State Employee Group Benefits Plan.

Risk Management and Tort Defense Division

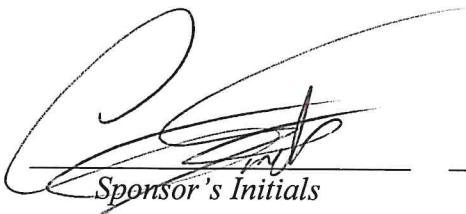
- The bill limits/determines recoverable damages in a settlement.
- There is no measurable fiscal impact to the Department of Administration's Risk Management and Tort Defense Division.

Montana University System

5. The Montana University System Insurance Plan currently has an obligation to provide claims histories upon request.

Department of Corrections

6. SB 251 proposes numerous amendments to damages statutes for lawsuits involving injuries that require medical care. All the proposed amendments reduce the likely total damages a liable defendant will have to pay.
7. The amendments attempt to abrogate common law court decisions and cap medical damages generally at the amounts expended for care.
8. The types of lawsuits that are impacted by this bill are those handled by the Risk Management and Tort Defense Division, on behalf of the Department of Corrections.



Sponsor's Initials

2/22/21

Date

KA

Budget Director's Initials

2/22/21

Date

SENATE BILL NO. 251

INTRODUCED BY C. SMITH

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO DAMAGES IN LAWSUITS; PROVIDING THE MEASURE OF DAMAGES RECOVERABLE FOR MEDICAL SERVICES OR TREATMENT IN ACTIONS ARISING FROM BODILY INJURY OR DEATH; PROVIDING THAT DAMAGES IN ANY ACTION ARISING FROM BODILY INJURY OR DEATH EXCEEDING CERTAIN AMOUNTS ARE UNREASONABLE, UNCONSCIONABLE, AND GROSSLY OPPRESSIVE CONTRARY TO SUBSTANTIAL JUSTICE; ABROGATING THE COMMON LAW COLLATERAL SOURCE RULE, COURT DECISIONS, AND ALL PRIOR STATUTES APPLICABLE TO DETERMINING THE AMOUNTS RECOVERABLE BY PLAINTIFFS AS DAMAGES FOR MEDICAL SERVICES OR TREATMENT RELATING TO MEDICAL SERVICES OR TREATMENT; SETTING JURY CONSIDERATIONS FOR AWARDS OF MEDICAL SERVICES OR TREATMENT; PROVIDING DEFINITIONS; AMENDING SECTIONS 27-1-202, 27-1-302, 27-1-307, AND 27-1-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-202, MCA, is amended to read:

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Section 2. Section 27-1-302, MCA, is amended to read:

"27-1-302. Damages to be reasonable. (1) Subject to subsection (2), Damages—damages must in all cases be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages contrary to substantial justice, no more than reasonable damages can be recovered.

(2) In any action arising from bodily injury or death, damages exceeding amounts provided in 27-1-308(2) are unreasonable, unconscionable, and grossly oppressive contrary to substantial justice."

Section 3. Section 27-1-307, MCA, is amended to read:

"27-1-307. Definitions. As used in 27-1-308 and this section:

(1) "Collateral source" means a payment for something that is later included in a tort award and that is made to or for the benefit of a plaintiff or is otherwise available to the plaintiff:

(a) for medical expenses and disability payments under the federal Social Security Act, any federal, state, or local income disability act, or any other public program;

(b) under any health, sickness, or income disability insurance or automobile accident insurance that provides health benefits or income disability coverage, and any other similar insurance benefits available to the plaintiff, except life insurance;

(c) under any contract or agreement of any person, group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except gifts or gratuitous contributions or assistance;

(d) any contractual or voluntary wage continuation plan provided by an employer or other system intended to provide wages during a period of disability; and

(e) any other source, except the assets of the plaintiff or of the plaintiff's immediate family if the plaintiff is obligated to repay a member of the plaintiff's immediate family.

(2) "Health care provider" includes hospitals, institutions, laboratories, doctors, physicians, optometrists, dentists, nurses, therapists, and any other medical or health care facilities, professionals or persons who diagnose, evaluate, treat, or otherwise deliver medical services or treatment to a plaintiff.

(3) (a) "Medical services or treatment" means any actions taken by a health care provider to observe, identify, diagnose, stabilize, address, ameliorate, correct, remedy, rehabilitate, manage, combat, or care for a plaintiff's injury, condition, disease, or disorder, or symptoms of a plaintiff's injury, condition, disease, or disorder.

(b) The term includes any equipment, facilities, medicines, drugs, prescriptions, devices, or products provided or applied to a plaintiff by a health care provider or consumed by a plaintiff at a health care provider's

1 direction.

2 ~~(2)(4)~~ "Person" includes individuals, corporations, associations, societies, firms, partnerships, joint-
3 stock companies, government entities, political subdivisions, and any other entity or aggregate of individuals.

4 ~~(3)(5)~~ (a) "Plaintiff" means a person who alleges to have sustained bodily injury, or on whose behalf
5 recovery for bodily injury or death is sought, or who would have a beneficial, legal, or equitable interest in a
6 recovery.

7 (b) The term includes:

8 (i) a legal representative;

9 (ii) a person with a wrongful death or surviving cause of action;

10 (iii) a person seeking recovery on a claim for loss of consortium, society, assistance, companionship,
11 or services; and

12 (iv) any other person whose right of recovery or whose claim or status is derivative of one who has
13 sustained bodily injury or death."
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15 **Section 4.** Section 27-1-308, MCA, is amended to read:

16 **"27-1-308. ~~Collateral source reductions in~~ Allowed recovery and permissible evidence --**
17 **reasonable value of medical or health care services or treatment -- actions arising from bodily injury or**
18 **death -- subrogation rights.** (1) (a) The purpose of this section is to abrogate the common law collateral
19 source rule, court decisions, and all prior statutes applicable to determining the amounts recoverable by
20 plaintiffs as damages for medical services or treatment.

21 (b) This section does not modify duties owed in accordance with 33-18-201.

22 (2) In an action arising from bodily injury or death when the total award against all defendants is in
23 excess of \$50,000 and the plaintiff will be fully compensated for the plaintiff's damages, exclusive of court costs
24 and attorney fees, a plaintiff's recovery must be reduced by any amount paid or payable from a collateral
25 source that does not have a subrogation right, a plaintiff's recovery may not exceed amounts actually:

26 (a) paid by or on behalf of the plaintiff to health care providers that rendered reasonable and
27 necessary medical services or treatment to the plaintiff;

28 (b) necessary to satisfy charges that have been incurred and at the time of trial are still owing and

1 payable to health care providers for reasonable and necessary medical services or treatment rendered to the
2 plaintiff; and

3 (c) necessary to provide for any future reasonable and necessary medical services or treatment for
4 the plaintiff.

5 ~~(2) Before an insurance policy payment is used to reduce an award under subsection (1), the~~
6 ~~following amounts must be deducted from the amount of the insurance policy payment:~~

7 ~~(a) the amount the plaintiff paid for the 5 years prior to the date of injury;~~

8 ~~(b) the amount the plaintiff paid from the date of injury to the date of judgment; and~~

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10 ~~period for which any reduction of an award is made pursuant to subsection (3).~~

11 (3) The jury shall determine its award for the reasonable value of medical services or treatment
12 without consideration of any charges for medical services or treatment that were included on health care
13 providers' bills but resolved by way of contractual discount, price reduction, disallowance, gift, write-off, or
14 otherwise not paid collateral sources. After the jury determines its award, reduction of the award must be made
15 by the trial judge at a hearing and upon a separate submission of evidence relevant to the existence and
16 amount of collateral sources. Evidence Subject to subsection (6), evidence is admissible to establish the
17 reasonable value of medical services or treatment is limited to evidence identifying the amounts actually:

18 at the hearing to show that the plaintiff has been or may be reimbursed from a collateral source that
19 does not have a subrogation right. If the trial judge finds that, at the time of hearing, it is not reasonably
20 determinable whether or in what amount a benefit from a collateral source will be payable, the judge shall:

21 ~~(a) order any person against whom an award was rendered and who claims a deduction under this~~
22 ~~section to make a deposit into court of the disputed amount, at interest~~

23 (a) paid by or on behalf of the plaintiff, regardless of the source of payment, to satisfy the financial
24 obligation for medical services or treatment that the plaintiff received; and

25 ~~(b) reduce the award by the amount deposited. The amount deposited and any interest on that~~
26 ~~amount are subject to the further order of the court, pursuant to the requirements of this section. necessary to~~
27 satisfy the financial obligation for medical services or treatment rendered to the plaintiff that have been incurred
28 but not yet satisfied. This evidence may not include any reference to sums that exceed the amount for which

1 the unpaid charges could be satisfied if submitted to any health insurance covering the plaintiff or any public or
2 government-sponsored health care benefit program for which the plaintiff is eligible, regardless of whether the
3 incurred but not yet satisfied charges have been or will be submitted to the plaintiff's health insurance or public
4 or government-sponsored health care benefit program. If the plaintiff is not covered by any health insurance
5 and is not eligible for any public or government-sponsored health care benefit program, evidence of the
6 reasonable value of medical services or treatment incurred but not yet satisfied is limited to the medicare
7 reimbursement rate in effect at the time the plaintiff's services or treatment occurred for the specific medical
8 services or treatment rendered to the plaintiff.

9 (c) necessary to satisfy the financial obligation for any reasonable and necessary future medical
10 services or treatment of the plaintiff. This evidence may not include any reference to sums that exceed the
11 amount for which the future charges of health care providers could be satisfied if submitted to any health
12 insurance covering the plaintiff or any public or government-sponsored health care benefit program for which
13 the plaintiff is eligible. If the plaintiff is not covered by any health insurance and is not eligible for any public or
14 government-sponsored health care benefit program, evidence of the reasonable present value of any future
15 reasonable and necessary medical services or treatment is limited to the medicare reimbursement rate in effect
16 at the time of trial for the reasonable and necessary future medical services or treatment of the plaintiff.

17 (4) If prior to trial a defendant, a defendant's insurer or authorized representative, or any combination
18 of the three, pays any part of the financial obligation for medical services or treatment provided to the plaintiff,
19 then prior to the entry of judgment the court shall reduce the sum awarded to the plaintiff at trial by the amount
20 of the payment or other collateral source as defined in 27-1-307(1).

21 (5) Except for subrogation rights specifically granted by state or federal law, law or provided by
22 contract, there is no right to subrogation for any amount paid or payable to a plaintiff from a collateral source if
23 for an award is reduced by that amount under entered as provided in subsection (1) (2).

24 (6)- A health care provider may not attempt to recover more than the amounts allowed as damages
25 under this section from a plaintiff."

26
27 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.
28

Amendment - 1st Reading - Requested by: Steve Fitzpatrick

67th Legislature

Drafter: Sonja Nowakowski, 406-444-3078

SB 251.1.1

1 NEW SECTION. **Section 6. Applicability.** [This act] applies to claims that accrue on or after [the
2 effective date of this act].

3

4

- END -

DRAFT

Amendments to Senate Bill No. 251
1st Reading Copy

Requested by Steve Fitzpatrick
For the (S) Business, Labor, and Economic Affairs

Prepared by Sonja Nowakowski
02/24/2021, 05:23:28

1. Page 3, line 18.

Following: "(1)"

Insert: "(a)"

2. Page 3.

Following: line 20

Insert: "(b) This section does not modify duties owed in accordance with 33-18-201."

3. Page 4, line 15.

Strike: "Evidence"

Insert: "Subject to subsection (6), evidence"

4. Page 5.

Following: line 22

Insert: "(6) A health care provider may not attempt to recover more than the amounts allowed as damages under this section from a plaintiff."

- END -

Explanation - Note: Because the page and line numbers referred to in these amendment instructions are required to match the page and line numbers of the official bill version being amended, they will not necessarily match the page and line numbers shown in any related Amendments in Context document.

SENATE BILL NO. 251

INTRODUCED BY C. SMITH

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO DAMAGES IN LAWSUITS; PROVIDING THE MEASURE OF DAMAGES RECOVERABLE FOR MEDICAL SERVICES OR TREATMENT IN ACTIONS ARISING FROM BODILY INJURY OR DEATH; PROVIDING THAT DAMAGES IN ANY ACTION ARISING FROM BODILY INJURY OR DEATH EXCEEDING CERTAIN AMOUNTS ARE UNREASONABLE, UNCONSCIONABLE, AND GROSSLY OPPRESSIVE CONTRARY TO SUBSTANTIAL JUSTICE; ABROGATING THE COMMON LAW COLLATERAL SOURCE RULE, COURT DECISIONS, AND ALL PRIOR STATUTES APPLICABLE TO DETERMINING THE AMOUNTS RECOVERABLE BY PLAINTIFFS AS DAMAGES FOR MEDICAL SERVICES OR TREATMENT RELATING TO MEDICAL SERVICES OR TREATMENT; SETTING JURY CONSIDERATIONS FOR AWARDS OF MEDICAL SERVICES OR TREATMENT; PROVIDING DEFINITIONS; AMENDING SECTIONS 27-1-202, 27-1-302, 27-1-307, AND 27-1-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-202, MCA, is amended to read:

"27-1-202. Right to compensatory damages. Every person who suffers detriment from the unlawful act or omission of another may recover from the person in fault a compensation ~~therefor~~ for it in money, which is called damages. The measure of the damages recoverable from the person in fault for the reasonable value of medical services or treatment in actions arising from bodily injury or death is set forth in 27-1-308."

Section 2. Section 27-1-302, MCA, is amended to read:

"27-1-302. Damages to be reasonable. (1) Subject to subsection (2), Damages—damages must in all cases be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages contrary to substantial justice, no more than reasonable damages can be recovered.

(2) In any action arising from bodily injury or death, damages exceeding amounts provided in 27-1-308(2) are unreasonable, unconscionable, and grossly oppressive contrary to substantial justice."

Section 3. Section 27-1-307, MCA, is amended to read:

"27-1-307. Definitions. As used in 27-1-308 and this section:

(1) "Collateral source" means a payment for something that is later included in a tort award and that is made to or for the benefit of a plaintiff or is otherwise available to the plaintiff:

(a) for medical expenses and disability payments under the federal Social Security Act, any federal, state, or local income disability act, or any other public program;

(b) under any health, sickness, or income disability insurance or automobile accident insurance that provides health benefits or income disability coverage, and any other similar insurance benefits available to the plaintiff, except life insurance;

(c) under any contract or agreement of any person, group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except gifts or gratuitous contributions or assistance;

(d) any contractual or voluntary wage continuation plan provided by an employer or other system intended to provide wages during a period of disability; and

(e) any other source, except the assets of the plaintiff or of the plaintiff's immediate family if the plaintiff is obligated to repay a member of the plaintiff's immediate family.

(2) "Health care provider" includes hospitals, institutions, laboratories, doctors, physicians, optometrists, dentists, nurses, therapists, and any other medical or health care facilities, professionals or persons who diagnose, evaluate, treat, or otherwise deliver medical services or treatment to a plaintiff.

(3) (a) "Medical services or treatment" means any actions taken by a health care provider to observe, identify, diagnose, stabilize, address, ameliorate, correct, remedy, rehabilitate, manage, combat, or care for a plaintiff's injury, condition, disease, or disorder, or symptoms of a plaintiff's injury, condition, disease, or disorder.

(b) The term includes any equipment, facilities, medicines, drugs, prescriptions, devices, or products provided or applied to a plaintiff by a health care provider or consumed by a plaintiff at a health care provider's

1 direction.

2 ~~(2)(4)~~ "Person" includes individuals, corporations, associations, societies, firms, partnerships, joint-
3 stock companies, government entities, political subdivisions, and any other entity or aggregate of individuals.

4 ~~(3)(5)~~ (a) "Plaintiff" means a person who alleges to have sustained bodily injury, or on whose behalf
5 recovery for bodily injury or death is sought, or who would have a beneficial, legal, or equitable interest in a
6 recovery.

7 (b) The term includes:

8 (i) a legal representative;

9 (ii) a person with a wrongful death or surviving cause of action;

10 (iii) a person seeking recovery on a claim for loss of consortium, society, assistance, companionship,
11 or services; and

12 (iv) any other person whose right of recovery or whose claim or status is derivative of one who has
13 sustained bodily injury or death."
14

15 **Section 4.** Section 27-1-308, MCA, is amended to read:

16 **"27-1-308. Collateral source reductions in Allowed recovery and permissible evidence --**
17 **reasonable value of medical or health care services or treatment -- actions arising from bodily injury or**
18 **death -- subrogation rights.** (1) (A) The purpose of this section is to abrogate the common law collateral
19 source rule, court decisions, and all prior statutes applicable to determining the amounts recoverable by
20 plaintiffs as damages for medical services or treatment.

21 (B) THIS SECTION DOES NOT MODIFY DUTIES OWED IN ACCORDANCE WITH 33-18-201.

22 (2) In an action arising from bodily injury or death when the total award against all defendants is in
23 excess of \$50,000 and the plaintiff will be fully compensated for the plaintiff's damages, exclusive of court costs
24 and attorney fees, a plaintiff's recovery must be reduced by any amount paid or payable from a collateral
25 source that does not have a subrogation right, a plaintiff's recovery may not exceed amounts actually:

26 (a) paid by or on behalf of the plaintiff to health care providers that rendered reasonable and
27 necessary medical services or treatment to the plaintiff;

28 (b) necessary to satisfy charges that have been incurred and at the time of trial are still owing and

1 payable to health care providers for reasonable and necessary medical services or treatment rendered to the
2 plaintiff; and

3 (c) necessary to provide for any future reasonable and necessary medical services or treatment for
4 the plaintiff.

5 ~~(2) Before an insurance policy payment is used to reduce an award under subsection (1), the~~
6 ~~following amounts must be deducted from the amount of the insurance policy payment:~~

7 ~~(a) the amount the plaintiff paid for the 5 years prior to the date of injury;~~

8 ~~(b) the amount the plaintiff paid from the date of injury to the date of judgment; and~~

9 ~~(c) the present value of the amount the plaintiff is obligated to pay to keep the policy in force for the~~
10 ~~period for which any reduction of an award is made pursuant to subsection (3).~~

11 (3) The jury shall determine its award for the reasonable value of medical services or treatment
12 without consideration of any charges for medical services or treatment that were included on health care
13 providers' bills but resolved by way of contractual discount, price reduction, disallowance, gift, write-off, or
14 otherwise not paid collateral sources. After the jury determines its award, reduction of the award must be made
15 by the trial judge at a hearing and upon a separate submission of evidence relevant to the existence and
16 amount of collateral sources. Evidence ~~SUBJECT TO SUBSECTION (6), EVIDENCE~~ Evidence is admissible to
17 establish the reasonable value of medical services or treatment is limited to evidence identifying the amounts
18 actually:

19 at the hearing to show that the plaintiff has been or may be reimbursed from a collateral source that
20 does not have a subrogation right. If the trial judge finds that, at the time of hearing, it is not reasonably
21 determinable whether or in what amount a benefit from a collateral source will be payable, the judge shall:

22 ~~(a) order any person against whom an award was rendered and who claims a deduction under this~~
23 ~~section to make a deposit into court of the disputed amount, at interest~~

24 (a) paid by or on behalf of the plaintiff, regardless of the source of payment, to satisfy the financial
25 obligation for medical services or treatment that the plaintiff received; and

26 ~~(b) reduce the award by the amount deposited. The amount deposited and any interest on that~~
27 ~~amount are subject to the further order of the court, pursuant to the requirements of this section. necessary to~~
28 satisfy the financial obligation for medical services or treatment rendered to the plaintiff that have been incurred

1 but not yet satisfied. This evidence may not include any reference to sums that exceed the amount for which
2 the unpaid charges could be satisfied if submitted to any health insurance covering the plaintiff or any public or
3 government-sponsored health care benefit program for which the plaintiff is eligible, regardless of whether the
4 incurred but not yet satisfied charges have been or will be submitted to the plaintiff's health insurance or public
5 or government-sponsored health care benefit program. ~~If the plaintiff is not covered by any health insurance~~
6 ~~and is not eligible for any public or government-sponsored health care benefit program, evidence of the~~
7 ~~reasonable value of medical services or treatment incurred but not yet satisfied is limited to the medicare~~
8 ~~reimbursement rate in effect at the time the plaintiff's services or treatment occurred for the specific medical~~
9 ~~services or treatment rendered to the plaintiff.~~

10 (c) necessary to satisfy the financial obligation for any reasonable and necessary future medical
11 services or treatment of the plaintiff. This evidence may not include any reference to sums that exceed the
12 amount for which the future charges of health care providers could be satisfied if submitted to any health
13 insurance covering the plaintiff or any public or government-sponsored health care benefit program for which
14 the plaintiff is eligible. ~~If the plaintiff is not covered by any health insurance and is not eligible for any public or~~
15 ~~government-sponsored health care benefit program, evidence of the reasonable present value of any future~~
16 ~~reasonable and necessary medical services or treatment is limited to the medicare reimbursement rate in effect~~
17 ~~at the time of trial for the reasonable and necessary future medical services or treatment of the plaintiff.~~

18 (4) If prior to trial a defendant, a defendant's insurer or authorized representative, or any combination
19 of the three, pays any part of the financial obligation for medical services or treatment provided to the plaintiff,
20 then prior to the entry of judgment the court shall reduce the sum awarded to the plaintiff at trial by the amount
21 of the payment or other collateral source as defined in 27-1-307(1).

22 (5) Except for subrogation rights specifically granted by state or federal law, law or provided by
23 contract, there is no right to subrogation for any amount paid or payable to a plaintiff from a collateral source if
24 for an award is reduced by that amount under entered as provided in subsection (1) (2).

25 ~~(6) A HEALTH CARE PROVIDER MAY NOT ATTEMPT TO RECOVER MORE THAN THE AMOUNTS ALLOWED AS~~
26 ~~DAMAGES UNDER THIS SECTION FROM A PLAINTIFF.~~

27
28 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

1

2 NEW SECTION. **Section 6. Applicability.** [This act] applies to claims that accrue on or after [the
3 effective date of this act].

4

- END -

DRAFT

SENATE BILL NO. 251

INTRODUCED BY C. SMITH

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO DAMAGES IN LAWSUITS; PROVIDING THE MEASURE OF DAMAGES RECOVERABLE FOR MEDICAL SERVICES OR TREATMENT IN ACTIONS ARISING FROM BODILY INJURY OR DEATH; PROVIDING THAT DAMAGES IN ANY ACTION ARISING FROM BODILY INJURY OR DEATH EXCEEDING CERTAIN AMOUNTS ARE UNREASONABLE, UNCONSCIONABLE, AND GROSSLY OPPRESSIVE CONTRARY TO SUBSTANTIAL JUSTICE; ABROGATING THE COMMON LAW COLLATERAL SOURCE RULE, COURT DECISIONS, AND ALL PRIOR STATUTES APPLICABLE TO DETERMINING THE AMOUNTS RECOVERABLE BY PLAINTIFFS AS DAMAGES FOR MEDICAL SERVICES OR TREATMENT RELATING TO MEDICAL SERVICES OR TREATMENT; SETTING JURY CONSIDERATIONS FOR AWARDS OF MEDICAL SERVICES OR TREATMENT; PROVIDING DEFINITIONS; AMENDING SECTIONS 27-1-202, 27-1-302, 27-1-307, AND 27-1-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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Section 2. Section 27-1-302, MCA, is amended to read:

"27-1-302. Damages to be reasonable. (1) Subject to subsection (2), Damages—damages must in all cases be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages contrary to substantial justice, no more than reasonable damages can be recovered.

(2) In any action arising from bodily injury or death, damages exceeding amounts provided in 27-1-308(2) are unreasonable, unconscionable, and grossly oppressive contrary to substantial justice."

Section 3. Section 27-1-307, MCA, is amended to read:

"27-1-307. Definitions. As used in 27-1-308 and this section:

(1) "Collateral source" means a payment for something that is later included in a tort award and that is made to or for the benefit of a plaintiff or is otherwise available to the plaintiff:

(a) for medical expenses and disability payments under the federal Social Security Act, any federal, state, or local income disability act, or any other public program;

(b) under any health, sickness, or income disability insurance or automobile accident insurance that provides health benefits or income disability coverage, and any other similar insurance benefits available to the plaintiff, except life insurance;

(c) under any contract or agreement of any person, group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except gifts or gratuitous contributions or assistance;

(d) any contractual or voluntary wage continuation plan provided by an employer or other system intended to provide wages during a period of disability; and

(e) any other source, except the assets of the plaintiff or of the plaintiff's immediate family if the plaintiff is obligated to repay a member of the plaintiff's immediate family.

(2) "Health care provider" includes hospitals, institutions, laboratories, doctors, physicians, optometrists, dentists, nurses, therapists, and any other medical or health care facilities, professionals or persons who diagnose, evaluate, treat, or otherwise deliver medical services or treatment to a plaintiff.

(3) (a) "Medical services or treatment" means any actions taken by a health care provider to observe, identify, diagnose, stabilize, address, ameliorate, correct, remedy, rehabilitate, manage, combat, or care for a plaintiff's injury, condition, disease, or disorder, or symptoms of a plaintiff's injury, condition, disease, or disorder.

(b) The term includes any equipment, facilities, medicines, drugs, prescriptions, devices, or products provided or applied to a plaintiff by a health care provider or consumed by a plaintiff at a health care provider's

1 direction.

2 ~~(2)(4)~~ "Person" includes individuals, corporations, associations, societies, firms, partnerships, joint-
3 stock companies, government entities, political subdivisions, and any other entity or aggregate of individuals.

4 ~~(3)(5)~~ (a) "Plaintiff" means a person who alleges to have sustained bodily injury, or on whose behalf
5 recovery for bodily injury or death is sought, or who would have a beneficial, legal, or equitable interest in a
6 recovery.

7 (b) The term includes:

8 (i) a legal representative;

9 (ii) a person with a wrongful death or surviving cause of action;

10 (iii) a person seeking recovery on a claim for loss of consortium, society, assistance, companionship,
11 or services; and

12 (iv) any other person whose right of recovery or whose claim or status is derivative of one who has
13 sustained bodily injury or death."
14

15 **Section 4.** Section 27-1-308, MCA, is amended to read:

16 **"27-1-308. Collateral source reductions in Allowed recovery and permissible evidence --**
17 **reasonable value of medical or health care services or treatment -- actions arising from bodily injury or**
18 **death -- subrogation rights.** (1) (A) The purpose of this section is to abrogate the common law collateral
19 source rule, court decisions, and all prior statutes applicable to determining the amounts recoverable by
20 plaintiffs as damages for medical services or treatment.

21 (B) THIS SECTION DOES NOT MODIFY DUTIES OWED IN ACCORDANCE WITH 33-18-201.

22 (2) In an action arising from bodily injury or death when the total award against all defendants is in
23 excess of \$50,000 and the plaintiff will be fully compensated for the plaintiff's damages, exclusive of court costs
24 and attorney fees, a plaintiff's recovery must be reduced by any amount paid or payable from a collateral
25 source that does not have a subrogation right, a plaintiff's recovery may not exceed amounts actually:

26 (a) paid by or on behalf of the plaintiff to health care providers that rendered reasonable and
27 necessary medical services or treatment to the plaintiff;

28 (b) necessary to satisfy charges that have been incurred and at the time of trial are still owing and

1 payable to health care providers for reasonable and necessary medical services or treatment rendered to the
2 plaintiff; and

3 (c) necessary to provide for any future reasonable and necessary medical services or treatment for
4 the plaintiff.

5 ~~(2) Before an insurance policy payment is used to reduce an award under subsection (1), the~~
6 ~~following amounts must be deducted from the amount of the insurance policy payment:~~

7 ~~(a) the amount the plaintiff paid for the 5 years prior to the date of injury;~~

8 ~~(b) the amount the plaintiff paid from the date of injury to the date of judgment; and~~

9 ~~(c) the present value of the amount the plaintiff is obligated to pay to keep the policy in force for the~~
10 ~~period for which any reduction of an award is made pursuant to subsection (3).~~

11 (3) The jury shall determine its award for the reasonable value of medical services or treatment
12 without consideration of any charges for medical services or treatment that were included on health care
13 providers' bills but resolved by way of contractual discount, price reduction, disallowance, gift, write-off, or
14 otherwise not paid collateral sources. After the jury determines its award, reduction of the award must be made
15 by the trial judge at a hearing and upon a separate submission of evidence relevant to the existence and
16 amount of collateral sources. Evidence SUBJECT TO SUBSECTION (6), EVIDENCE is admissible to establish the
17 reasonable value of medical services or treatment is limited to evidence identifying the amounts actually:

18 at the hearing to show that the plaintiff has been or may be reimbursed from a collateral source that
19 does not have a subrogation right. If the trial judge finds that, at the time of hearing, it is not reasonably
20 determinable whether or in what amount a benefit from a collateral source will be payable, the judge shall:

21 ~~(a) order any person against whom an award was rendered and who claims a deduction under this~~
22 ~~section to make a deposit into court of the disputed amount, at interest~~

23 (a) paid by or on behalf of the plaintiff, regardless of the source of payment, to satisfy the financial
24 obligation for medical services or treatment that the plaintiff received; and

25 ~~(b) reduce the award by the amount deposited. The amount deposited and any interest on that~~
26 ~~amount are subject to the further order of the court, pursuant to the requirements of this section. necessary to~~
27 satisfy the financial obligation for medical services or treatment rendered to the plaintiff that have been incurred
28 but not yet satisfied. This evidence may not include any reference to sums that exceed the amount for which

1 the unpaid charges could be satisfied if submitted to any health insurance covering the plaintiff or any public or
2 government-sponsored health care benefit program for which the plaintiff is eligible, regardless of whether the
3 incurred but not yet satisfied charges have been or will be submitted to the plaintiff's health insurance or public
4 or government-sponsored health care benefit program. If the plaintiff is not covered by any health insurance
5 and is not eligible for any public or government-sponsored health care benefit program, evidence of the
6 reasonable value of medical services or treatment incurred but not yet satisfied is limited to the medicare
7 reimbursement rate in effect at the time the plaintiff's services or treatment occurred for the specific medical
8 services or treatment rendered to the plaintiff.

9 (c) necessary to satisfy the financial obligation for any reasonable and necessary future medical
10 services or treatment of the plaintiff. This evidence may not include any reference to sums that exceed the
11 amount for which the future charges of health care providers could be satisfied if submitted to any health
12 insurance covering the plaintiff or any public or government-sponsored health care benefit program for which
13 the plaintiff is eligible. If the plaintiff is not covered by any health insurance and is not eligible for any public or
14 government-sponsored health care benefit program, evidence of the reasonable present value of any future
15 reasonable and necessary medical services or treatment is limited to the medicare reimbursement rate in effect
16 at the time of trial for the reasonable and necessary future medical services or treatment of the plaintiff.

17 (4) If prior to trial a defendant, a defendant's insurer or authorized representative, or any combination
18 of the three, pays any part of the financial obligation for medical services or treatment provided to the plaintiff,
19 then prior to the entry of judgment the court shall reduce the sum awarded to the plaintiff at trial by the amount
20 of the payment or other collateral source as defined in 27-1-307(1).

21 (5) Except for subrogation rights specifically granted by state or federal law, law or provided by
22 contract, there is no right to subrogation for any amount paid or payable to a plaintiff from a collateral source if
23 for an award is reduced by that amount under entered as provided in subsection (1) (2).

24 ~~(6) A HEALTH CARE PROVIDER MAY NOT ATTEMPT TO RECOVER MORE THAN THE AMOUNTS ALLOWED AS~~
25 ~~DAMAGES UNDER THIS SECTION FROM A PLAINTIFF.~~

26 (6) The provisions of this section do not apply if a plaintiff requests that a health care provider submit
27 the charges to the plaintiff's health insurance or public or government-sponsored health care benefit program
28 and, within 45 days of the request, the health care provider has not complied with the plaintiff's request, to the

1 extent permitted by law.

2 (7) For care provided to a plaintiff prior to a final settlement or judgment, a health care provider may
3 not attempt to recover from the plaintiff more than the amounts allowed as damages under this section."

4

5 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

6

7 NEW SECTION. **Section 6. Applicability.** [This act] applies to claims that accrue on or after [the
8 effective date of this act].

9

- END -

Amendments to Senate Bill No. 251
3rd Reading Copy

Requested by Katie Sullivan
For the (H) Business and Labor

Prepared by Jameson Walker
03/22/2021, 08:48:08

1. Page 5, line 24 through line 25.

Strike: subsection (6) in its entirety

Insert: "(6) The provisions of this section do not apply if a plaintiff requests that a health care provider submit the charges to the plaintiff's health insurance or public or government-sponsored health care benefit program and, within 45 days of the request, the health care provider has not complied with the plaintiff's request, to the extent permitted by law.
(7) For care provided to a plaintiff prior to a final settlement or judgment, a health care provider may not attempt to recover from the plaintiff more than the amounts allowed as damages under this section."

- END -

Explanation - Note: Because the page and line numbers referred to in these amendment instructions are required to match the page and line numbers of the official bill version being amended, they will not necessarily match the page and line numbers shown in any related Amendments in Context document.

Amendments to house Bill No. 251
3rd Reading Copy

Requested by Edward Buttrey
For the (H) Business and Labor

Prepared by Jameson Walker
03/18/2021, 07:46:09

1. Page 4, line 16.

Following: "~~Evidence~~"

Strike: "SUBJECT TO SUBSECTION (6), EVIDENCE"

Insert: "Evidence"

2. Page 5, line 4 through line 8.

Following: "If the plaintiff" on line 4 through "the plaintiff." on line 8

3. Page 5, line 13 through line 16.

Strike: "If the plaintiff" on line 13 through "the plaintiff." on line 16

4. Page 5, line 24 through line 25.

Strike: subsection (6) in its entirety

- END -

Explanation - Note: Because the page and line numbers referred to in these amendment instructions are required to match the page and line numbers of the official bill version being amended, they will not necessarily match the page and line numbers shown in any related Amendments in Context document.

MINUTES

MONTANA SENATE 67th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS, LABOR, AND ECONOMIC AFFAIRS

Call to Order: Chair Steve Fitzpatrick, on February 19, 2021 at 9:00 A.M., in Room 422 Capitol

ROLL CALL

Members Present in the Committee Room:

Sen. Steve Fitzpatrick, Chair (R)
Sen. Gordon Vance, Vice Chair (R)
Sen. Terry Gauthier (R)
Sen. Mike Fox (D)
Sen. Bruce Gillespie (R)
Sen. Jason D. Small (R)
Sen. Cary Smith (R)
Sen. Mark Sweeney (D)

Members Present by Zoom Video Conference:

Sen. Carlie Boland, Vice Chair (D)
Sen. Christopher Pope (D)

Members Excused:

Sen. Jason W. Ellsworth (R)

Members Absent: None

Staff Present: Olivia Hopkins, Committee Secretary
Clara Bentler, Remote Meeting Coordinator
Sonja Nowakowski, Legislative Branch
Erin Sullivan, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 216, 2/16/2021; SB 217, 2/16/2021; SB 239, 2/16/2021; SB 251, 2/16/2021

HEARING ON SB 239

Opening Statement by Sponsor:

09:00:51 Sen. Mary McNally (D), SD 24, opened the hearing on SB 239, Uniform Directed Trust Act.

09:01:21 Sen. Sweeney entered the meeting.

Proponents' Testimony:

09:02:57 Ed Eck, Uniform Law Commission

09:08:24 David Dietrich, attorney

09:15:34 Molly Considine, attorney

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

09:23:17 Sen. Gillespie

09:23:50 Mr. Dietrich, attorney

09:25:28 Chair Fitzpatrick

09:25:51 Mr. Dietrich

09:26:21 Chair Fitzpatrick

Closing by Sponsor:

09:26:39 Sen. McNally

HEARING ON SB 216

Opening Statement by Sponsor:

09:27:37 Sen. Jason Small (R), SD 21, opened the hearing on SB 216, Revise laws relating to insurance parity compliance reporting.

Proponents' Testimony:

09:30:00 Jon Metropoulos, Montana Psychiatric Association (MTPA)

09:32:29 Jean Branscum, Montana Medical Association

09:34:31 Tim Clement, American Psychiatric Association

[EXHIBIT\(bus35a01\)](#)

09:37:23 Leonard Lantz, Montana Psychiatric Association

[EXHIBIT\(bus35a02\)](#)

09:38:41 Stacey Anderson, Montana Primary Care Association

09:39:30 Cora Neumann, psychiatrist

Opponents' Testimony:

09:41:07 John Doran, Blue Cross Blue Shield Montana

[EXHIBIT\(bus35a03\)](#)

09:43:03 Jennifer Hensley, PacificSource Health Plans

09:43:57 Greg Roadifer, Associated Employers
09:44:55 Bruce Knudsen, Montana Auto Dealers Association

Additional Testimony Received:

[EXHIBIT\(bus35a04\)](#)

Informational Testimony:

Questions from Committee Members and Responses:

09:46:29 Chair Fitzpatrick
09:46:37 Mr. Metropoulos, MTPA
09:47:05 Sen. Pope

Closing by Sponsor:

09:47:40 Sen. Small

HEARING ON SB 217

Opening Statement by Sponsor:

09:48:22 Sen. Jason Small (R), SD 21, opened the hearing on SB 217, Revise laws relating to psychiatric collaborative care.

Proponents' Testimony:

09:51:21 Aimee Grmoljez, Billings Clinic
[EXHIBIT\(bus35a05\)](#)

09:52:57 Jon Metropoulos, Montana Psychiatric Association

09:53:31 Sen. Gauthier entered the meeting.

09:54:06 Jean Branscum, Montana Medical Association
09:56:21 John Doran, Blue Cross Blue Shield Montana (BCBSMT)
09:58:13 Jennifer Hensley, PacificSource Health Plans
09:59:21 Tim Clement, American Psychiatric Association
[EXHIBIT\(bus35a06\)](#)

10:00:30 Leonard Lantz, Montana Psychiatric Association (MPA)
[EXHIBIT\(bus35a07\)](#)

10:01:51 Stacey Anderson, Montana Primary Care Association
[EXHIBIT\(bus35a08\)](#)

10:03:04 Cora Neumann, We Are Montana
[EXHIBIT\(bus35a09\)](#)

Opponents' Testimony:

10:04:27 Sarah Baxter, Montana Psychological Association
[EXHIBIT\(bus35a10\)](#)

10:06:50 Jennifer Robohm, doctor

Informational Testimony: None

Questions from Committee Members and Responses:

10:10:00 Sen. Gillespie
10:10:34 Mr. Doran, BCBSMT
10:11:09 Sen. Pope
10:12:13 Mr. Lantz, MPA

Closing by Sponsor:

10:13:10 Sen. Small

HEARING ON SB 251

Opening Statement by Sponsor:

10:14:37 Sen. Cary Smith (R), SD 27, opened the hearing on SB 251, Generally revise civil liability laws relating to damages.

Proponents' Testimony:

10:17:02 Lieutenant Governor Kristin Juras
10:20:30 Bridger Mahlum, Montana Chamber of Commerce

EXHIBIT(bus35a11)

10:24:04 Jean Branscum, Montana Medical Association
10:25:04 Edward Vozzo, Mountain Health Co-op
10:26:00 Aimee Grmoljez, American Property Casualty Insurance Association

EXHIBIT(bus35a12)

10:28:39 Ron Fulkerson, Yellowstone Insurance Exchange, RRG

EXHIBIT(bus35a13)

10:32:23 Jordan Crosby, Montana Defense Trial Lawyers

EXHIBIT(bus35a14)

10:35:39 Mark Crawshaw, Montana Hospitality Association (MHA)

EXHIBIT(bus35a15)

Opponents' Testimony:

10:37:20 Anders Blewett, attorney
10:50:13 Justin Stalpes, attorney
11:04:30 Al Smith, Montana Trial Lawyers Association

Informational Testimony: None

Questions from Committee Members and Responses:

11:11:02 Sen. Boland
11:11:55 Mr. Blewett, attorney
11:13:02 Sen. Boland
11:15:08 Mr. Blewett
11:15:52 Sen. Boland
11:16:51 Mr. Stalpes, attorney

SENATE COMMITTEE ON BUSINESS, LABOR, AND ECONOMIC AFFAIRS

February 19, 2021

PAGE 5 of 6

11:19:47 Sen. Pope
11:21:04 Mr. Crawshaw, MHA
11:21:25 Sen. Pope
11:22:36 Mr. Crawshaw
11:23:24 Sen. Pope

Closing by Sponsor:

11:26:43 Sen. Smith

11:33:30 Chair Fitzpatrick

ADJOURNMENT

Adjournment: 11:34 A.M.

Olivia Hopkins, Secretary

oh

Additional Documents:

EXHIBIT([bus35aad.pdf](#))

SB 251 Clarifies Medical Expense Recoveries

Compensatory damages exist for the purpose of making an injured party whole, not to enrich that injured person. When an injured party's medical expenses are paid by health insurance or government programs like Medicare or Medicaid, the total payouts actually made to the health care providers should represent the upper limit of compensatory damages recoverable in a lawsuit for medical expenses. To allow a claimant to recover more than what the doctors and hospitals are actually paid would permit a windfall recovery, which would not be consistent with the basic principles of compensatory damages.

Unfortunately, current statute, M.C.A. §27-1-308, as interpreted by the Montana Supreme Court, allows personal injury plaintiffs to introduce evidence and recover as compensatory damages charges that the claimants' health care providers have discounted or written off pursuant to the terms of insurance contracts or government programs. Even though the doctors were never paid these written-off amounts and the claimant never owed these sums, current Montana law allows personal injury lawyers to claim that the "reasonable value of the medical treatment" includes these written-off amounts never paid to the health care providers.

The fallacy of this approach can be seen by in the facts of the case that created this situation. In *Meek v. Montana Eighth Judicial District Court*, 379 Mont. 150 (2015), the plaintiff died from injuries incurred in a fall at a business. She received treatment covered by Medicare, with supplemental coverage through Blue Cross/Blue Shield. Before accounting for write-offs and disallowed amounts, the medical bills totaled \$197,154.93. But the real cost of the treatment – the amount actually paid to the doctors – amounted to less than 40% of that bill: only \$70,711.26. The Montana Supreme Court nonetheless ruled that courts must admit the full, undiscounted invoiced amounts as evidence of the value of the medical treatment even though these amounts were never paid or owed to the health care providers. These inflated figures, when presented to juries, cause confusion and can lead to enormous windfall damages awards.

SB 251 would solve this costly problem and restore common sense to the way Montana courts determine medical expense damages. Sums never paid to a claimant's health care providers and which the claimant never owed to anyone cannot be understood to be either "damages" or "compensatory" in any way. Instead, these amounts constitute nothing more than an illusion of damages: dollars that might have been spent but never were. SB 251 would re-define recoverable medical expense damages so these illusory, phantom damages are not part of any award. Further, SB 251 will narrow future medical expense damages to those sums necessarily expended to ensure that the claimant will receive the needed care, eliminating recovery of sums in excess of the actual cost to make that care available. With SB 251, Montana would join several other states that have addressed the recovery of medical expense damages through legislation to ensure that lawsuit recoveries for medical treatment make sense.¹

Preventing injury damages awards from being inflated by windfall recoveries will reduce inappropriate payouts and prevent an unnecessary burden on small businesses and others confronted by lawsuits.

¹ Source: <http://www.atra.org/issue/phantom-damages-reform/>

SB 251

DAMAGES RECOVERABLE IN PERSONAL INJURY LAWSUITS FOR MEDICAL TREATMENT

Bill Provision And Brief Description Of The Change	What Is The Purpose Of This Section Of The Bill And How Does It Seek To Accomplish This Goal?
Section 1 Amends § 27-1-202 by adding a sentence to link this section to the measure of medical expense damages in § 27-1-308.	Adds to the existing declaration of the right to recover compensatory damages a clarifying statement that the measure of the damages recoverable for the value of medical treatment is set forth in 27-1-308. The purpose of this addition is to prevent any court interpretation that the broad right declared in § 27-1-202 is inconsistent with § 27-1-308. Although § 27-1-202 establishes a general right to recover for injuries wrongfully incurred, the extent of that right is constrained by the way the reasonable value of medical care to treat those injuries is properly assessed. Under the bill, § 27-1-308 will establish the standard for determining the dollar value of the medical treatment received by a claimant. Section 1 reconciles those two statutory sections.
Section 2 Amends § 27-1-302 by adding a sentence to connect the declaration that damages be reasonable to the measure of medical expense damages in § 27-1-308.	Adds to the current statutory declaration that damages must be reasonable a clarification that an award of damages for medical treatment that exceeds the amounts allowed by § 27-1-308 would be unreasonable and excessive. This addition ensures that § 27-1-302 is consistent with § 27-1-308, and that there is only one standard for determining the recoverable amount of damages for medical treatment. § 27-1-302 already requires that damages must be “reasonable.” The additional sentence clarifies that the new calculation method established by § 27-1-308 sets the upper limit on what can be considered “reasonable.” The additional sentence ensures that the two provisions will be read together as complementary, and not creating competing standards.
Section 3 Adds defined terms to § 27-1-308	This language creates all-encompassing definitions for “health care provider” and “medical services or treatment.” These terms are used extensively in § 27-1-308.
Section 4(1) – amends § 27-1-308 Displaces common law and prior statutes addressing recoverable amounts for medical treatment	Adds a sentence indicating that other possible sources of law bearing on the recoverable sums for medical expense damages are abrogated. This addition ensures that no other source of law will create a conflict in deciding how to value medical treatment. Under the bill, in § 27-1-308 will determine how courts measure medical treatment damages in personal injury cases. It displaces all other possible sources of law that could conflict with § 27-1-308.
Section 4(2) – amends § 27-1-308	Eliminates prior language for limited application of collateral source payments with offsets for insurance premiums, and replaces with a definition of recoverable amounts for medical treatment that is tied

Replaces current process for applying collateral source payments with a limitation on recoverable sums based on payments made or actually necessary to satisfy treatment charges.	to what the providers were actually paid or will be necessary to satisfy charges that are still owing at the time of trial or that will be necessary in the future. This change creates a substantive limit on medical treatment damages. Only the sums paid to the providers, or the amounts actually necessary to satisfy charges still owing or that will be necessary in the future, can be awarded.
Section 4(3) – amends § 27-1-308 Replaces post-trial judicial hearing procedure to determine possible reduction of award for collateral source payments with a limitation on the evidence that may be introduced at trial on the value of the treatment provided or expected in the future.	Replaces the current post-trial hearing procedure in which the court considers and decides whether and to what extent an award may be reduced by collateral payments, and instead restricts evidence that a jury may hear to only the payments that medical treatment providers have collected, to sums that would actually be paid to the providers under applicable coverage, or if no coverage applies then to the Medicare reimbursement rate for the treatment. The jury will hear only evidence of what the treatment providers were paid, or would be paid under applicable insurance, or what Medicare would pay if the plaintiff is completely uninsured. No information of amounts disallowed, written off, or otherwise not paid or payable will be admitted or can be used to inflate the damages.
Section 4(4) – amends § 27-1-308 Adds a provision requires a reduction for any pre-trial payments of the plaintiff's medical expenses made on behalf of the defendant, or for the application of other collateral source payments.	This section ensures that pre-trial payments made on behalf of a defendant to cover some or all of a plaintiff's medical treatment will be credited against the award. Also, other allowed collateral source payments will reduce the award.
Section 4(5) – amends § 27-1-308 Clarifies that contractual subrogation rights may allow for subrogation.	If subrogation is allowed under the terms of the contract, or under state or federal law, then recovery may be sought from a plaintiff from an award of medical expense damages.
Section 5 Effective date	This bill will become effective upon passage and approval.
Section 6 Accrual	The bill's provisions will apply to new claims that accrue on or after the effective date.

February 18, 2021

VIA E-MAIL ONLY

Aimee Grmoljez
Crowley Fleck, PLLP
900 N. Last Chance Gulch, #200
Helena, MT 59601

SENATE BUSINESS & LABOR

Exhibit No. 12
Date 2/19/2021
Bill No. SB 251

Dear Aimee:

I'm writing in support of Senate Bill 251, which will restore common sense to the damages awarded to an injured Montana plaintiff.

When someone is injured in Montana, and she brings a claim or files a lawsuit as a result of the injury, she is entitled to recover as damages the reasonable value of the medical expenses she incurred. SB 251 simply defines how the medical expenses should be valued in a claim or lawsuit.

As anyone who has reviewed an Explanation of Benefits from her health insurer knows, there is often a significant difference between the amount that a healthcare provider bills for a service, and the amount that a health insurer pays. SB 251 establishes that an injured party can only claim as damages the amount of medical bills actually accepted as payment in full by the healthcare provider. In other words, a plaintiff cannot claim the full amount billed when the health care provider accepted far less as payment in full. If the injured plaintiff pays the full amount billed, she can claim this amount as damages, but this is exceedingly rare.

I have been forced to address this issue in numerous lawsuits defending Montana businesses. In 2013, I was defending Big Sky Resort after a gentleman fell and broke his hip while unloading a ski chairlift. The injured plaintiff was billed \$60,000 by the healthcare provider, but Medicare paid \$24,000 for the services provided, and the healthcare provider accepted this amount as payment in full. Despite the fact that the healthcare provider accepted \$24,000 as payment in full, the plaintiff tried to claim \$60,000, the amount billed, as medical expense damages.

Chief Federal District Judge Christensen, based on existing Montana law at the time, held that the plaintiff could not claim \$60,000 as medical expense damages and that his claim would be limited to the amount Medicare paid, \$24,000. The parties then stipulated to the amount of medical expense damages and stipulated that if the plaintiff prevails at trial he would be awarded the amount paid by Medicare. In other words, the trial was simplified and streamlined.

In 2015, in a case titled *Meek v. Montana Eighth Judicial District Court*, 2015 MT 130, the Montana Supreme Court significantly complicated this issue. In *Meek*, the Montana Supreme

Court held that a plaintiff was allowed to put on evidence of the full amount billed for medical expenses and that she could claim the full amount billed as damages, but that a defendant could challenge the amount claimed by presenting evidence of how much is paid by Medicare, Medicaid, private insurance, and other sources. Significantly, however, the Supreme Court held that a defendant could not present evidence of the actual amount paid by her health insurer. That evidence is expressly excluded from evidence. Thus, to attempt to prevent a windfall award, a Montana defendant must now hire an expert to offer an opinion about the reasonable value of the medical expenses at issue and pay that expert to write a report and testify about the reasonable value of the medical expenses. This process typically leads to motions being filed by both sides, so that both the lawyers and judges end up in court debating the amount that a plaintiff should be awarded in medical expense damages. This issue should be simple and straightforward because everyone knows the amount that was actually paid and accepted by the health care provider as payment in full.

Returning to the 2013 Big Sky case as an example, if *Meek* would have been enacted before that case, the plaintiff would have been able to claim \$60,000 in medical expense damages. Big Sky, in response, would have had to pay an expert to analyze the reasonable value of the medical expenses incurred and Big Sky have been required to pay the expert to prepare a written report, and then pay the expert to come to Montana to offer her opinion about the reasonable value of the medical expenses, all without refencing the fact that Medicare paid \$24,000 and that the health care provider accepted \$24,000 as payment in full. It would then have been left to the discretion of the jury to determine what the jury believed was the reasonable value of the medical expenses incurred, and the jury may have awarded the full amount billed, \$60,000.

Big Sky would have been forced to incur these expert witness expenses, and additional attorneys' fees and costs, even though it was undisputed that the healthcare provider accepted \$24,000 as payment in full for the plaintiff's healthcare expenses. *Meek* overcomplicates a simple issue and makes it vastly more expensive for Montana businesses to defend themselves when they have been sued.

In the Big Sky case, the difference between the amount billed and the amount accepted as payment in full was "only" \$36,000. In other cases, the difference has been in the millions. I urge you to pass Senate Bill 251 and restore common sense to the amount of damages that can be claimed by an injured plaintiff. There's no question that an injured plaintiff is entitled to recover the amount of healthcare expenses she incurred. She should not, however, be entitled to a windfall recovery, and Montana businesses should not have to hire expensive, out-of-state experts, to try to prevent such a windfall recovery.

Sincerely,

CROWLEY FLECK PLLP

/s/Ian McIntosh

Ian McIntosh

Hopkins, Olivia

From: leg-noreply@mt.gov
Sent: Thursday, February 18, 2021 11:49 AM
To: LEG Applications Email Backup; LEG Committee-Senate Business & Labor testimony
Subject: Public Comment for Bill SB-251: Generally revise civil liability laws relating to damages
2021-02-19 09:00 AM - (S) Business, Labor, and Economic Affairs Successfully Submitted
on 02-18-21 11:48

Details:

Bill: SB-251: Generally revise civil liability laws relating to damages 2021-02-19 09:00 AM - (S) Business, Labor, and Economic Affairs

Position: Proponent

Representing an Entity/Another Person: Yes

Organization: Yellowstone Insurance Exchange, RRG

Name: Ron Fulkerson

Email: ronf@yierrg.com

Phone: (816) 621-6743

City, State: Post Falls

Written Statement: Thank you for the opportunity to speak to you. I am Ron Fulkerson, Director of Claims, Yellowstone Insurance Exchange, A Risk Retention Group. Yellowstone Insurance Exchange, RRG is a medical professional and general liability insurance risk retention group; started in 2003. We insure rural critical access hospitals in 14 Montana. A risk retention group is a self-insurance pool of member hospitals. The member hospitals actually own the company. Before my employment with Yellowstone in 2004, I worked for the Farmers Insurance as a claims manager in Montana and Idaho handling professional liability medical negligence and general liability claims for 10 Years. As you know, many Montana residents rely on critical access hospitals in their communities for medical care and treatment. I speak in support of this bill because it will save time and legal/expert fees for our Montana hospitals. It will also require full compensation for Plaintiffs for the actual cost of their medical care. It is consistent with common sense, fairness and the reality of the actual costs to Plaintiffs. Currently to defend a hospital much time is devoted to scrutinizing the medical bills provided to determine reasonable costs. When medical bill costs are overstated as currently allowed, it requires many hours of attorney and expert witness review to find the actual costs of the medical care. This argument is carried over to mediations and trials and requires much research and time from our attorneys and experts. It also includes post trial arguments to reduce medical special damages to actual costs in the case of jury awards. Based upon my years of adjusting medical negligence claims, my view is that this will reduce defense costs for our hospitals by 25-30%. Since Yellowstone Insurance Exchange is owned by member hospitals this will also result in lowered premium costs as we pass this saving along to our member hospitals. Eliminating these arguments over what the medical billing says versus the actual cost to a Plaintiff will actually speed up the time in which a Plaintiff actually gets compensated.

Files:

Testify via Zoom: Yes

Zoom Method: Computer

Hopkins, Olivia

From: leg-noreply@mt.gov
Sent: Wednesday, February 17, 2021 9:35 PM
To: LEG Applications Email Backup; LEG Committee-Senate Business & Labor testimony
Subject: Public Comment for Bill SB-251: Generally revise civil liability laws relating to damages
2021-02-19 09:00 AM - (S) Business, Labor, and Economic Affairs Successfully Submitted
on 02-17-21 21:35

Details:

Bill: SB-251: Generally revise civil liability laws relating to damages 2021-02-19 09:00 AM - (S) Business, Labor, and Economic Affairs

Position: Proponent

Representing an Entity/Another Person: Yes

Organization: Montana Defense Trial Lawyers

Name: Jordan Crosby

Email: jyc@uazh.com

Phone: (406) 771-0007

City, State: Great Falls, MT

Written Statement: The Montana Defense Trial Lawyers stand in support of SB 251. Either Greg Dorrington or Jordan Crosby will testify.

Files:

Testify via Zoom: Yes

Zoom Method: Computer

Exhibit No. 15
Date 2/19/2021
Bill No. SB 251

Hopkins, Olivia

From: leg-noreply@mt.gov
Sent: Thursday, February 18, 2021 11:33 AM
To: LEG Applications Email Backup; LEG Committee-Senate Business & Labor testimony
Subject: Public Comment for Bill SB-251: Generally revise civil liability laws relating to damages
2021-02-19 09:00 AM - (S) Business, Labor, and Economic Affairs Successfully Submitted
on 02-18-21 11:33

Details:

Bill: SB-251: Generally revise civil liability laws relating to damages 2021-02-19 09:00 AM - (S) Business, Labor, and Economic Affairs

Position: Proponent

Representing an Entity/Another Person: Yes

Organization: Yellowstone Ins. Exchange/ MT Hosp. Assoc

Name: Mark Crawshaw FCAS, MAAA

Email: mark.crawshaw@madisoninc.com

Phone: (706) 342-7750

City, State: Madison, GA

Written Statement: If I am not available, I request Ms. Leslie R. Marlo FCAS, MAAA testify in my place.

Files:

Testify via Zoom: Yes

Zoom Method: Computer



2021 Session

Additional Documents

May include the following:

- **Business Report**
- **Roll Call -Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports**
- **Roll Call Votes**
- **Informational Item's**
- **Witness Statements**
- **Visitor Register**
- **Any other type of documents such as:**
Petitions, Pamphlets, Leaflets, Brochures, Emails, all
documents given to Committee Secretary 24 hours
after the meeting adjourned.

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

BUSINESS REPORT

**MONTANA SENATE
67th LEGISLATURE - REGULAR SESSION**

SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

Date: Friday, February 19, 2021

Place: Capitol

Time: 9:00 A.M.

Room: 422

BILLS and RESOLUTIONS HEARD:

SB 216 - Revise laws relating to insurance parity compliance reporting - Sen. Jason Small (R)

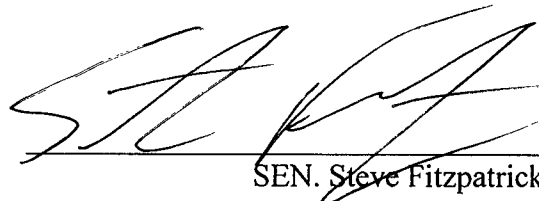
SB 217 - Revise laws relating to psychiatric collaborative care - Sen. Jason Small (R)

SB 239 - Uniform Directed Trust Act - Sen. Mary McNally (D)

SB 251 - Generally revise civil liability laws relating to damages - Sen. Cary Smith (R)

EXECUTIVE ACTION TAKEN: None

Comments: None



SEN. Steve Fitzpatrick, Chair

MONTANA STATE SENATE
Roll Call
BUSINESS AND LABOR COMMITTEE

DATE: 2/19/2021

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
VICE CHAIR VANCE	✓	
VICE CHAIR BOLAND	✓	
SEN. ELLSWORTH		✓
SEN. FOX	✓	
SEN. GAUTHIER		✓
SEN. GILLESPIE	✓	
SEN. POPE	✓	
SEN. SMALL	✓	
SEN. SMITH	✓	
SEN. SWEENEY		✓
CHAIRMAN FITZPATRICK	✓	
11 Committee Members		

4

SB 239 - Uniform Directed Trust Act

SB 239 - Uniform Directed Trust Act

SB 239 - Uniform Directed Trust Act

SB 239 - Uniform Directed Trust Act

SB 239 - Uniform Directed Trust Act

2

SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

Sponsor: **Sen. Jason Small (R)**

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

3E

SB 217 - Revise laws relating to psychiatric collaborative care

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

4

SB 251 - Generally revise civil liability laws relating to damages

Sponsor: **Sen. Cary Smith (R)**

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Senate Business, Labor and Economic Affair Committee					Meeting: 2/19/2021
Bill	Name	Position	Location	Email	Affiliation

SB 216	Leonard Lantz	Proponent	Helena MT	lenlantz@gmail.com	N/A
	Jean Branscum	Proponent	Helena MT	jean@mmaoffice.org	Montana Medical Association
	Tim Clement	Proponent	Washington DC	tclement@psych.org	American Psychiatric Association
	Stacey J Anders	Proponent	Helena MT	sanderson@mtpca.org	Montana Primary Care Association
	Greg Roadifer	Opponent	Billings MT	greg@aehr.org	Associated Employers
SB 217	Cora Neumann	Proponent	Bozeman MT	cora@coraneumann.com	N/A
	Leonard Lantz	Proponent	Helena MT	lenlantz@gmail.com	N/A
	Jean Branscum	Proponent	Helena MT	jean@mmaoffice.org	Montana Medical Association
	Aimee Grmoljez	Proponent	Helena MT	AGRMOLJEZ@CROW	Billings Clinic
	Tim Clement	Proponent	Washington DC	tclement@psych.org	American Psychiatric Association
	Stacey J Anders	Proponent	Helena MT	sanderson@mtpca.org	Montana Primary Care Association
	Sarah M. Baxter	Opponent	Hamilton MT	sarahbaxterphd@gmail.com	The Montana Psychological Association
	Jennifer Robohn	Opponent	Missoula MT	jsreemail@gmail.com	N/A
SB 239	Molly Considine	Proponent	Billings MT	mconsidine@ppbglav	N/A
SB 251	Leslie R. Marlo	Proponent	Newtown Square, PA	leslie.marlo@madison	Yellowstone Insurance Exchange / MT Hospital Assoc
	Ron Fulkerson	Proponent	Post Falls	ronf@yierrg.com	Yellowstone Insurance Exchange, RRG
	Mark Crawshaw	Proponent	Madison, GA	mark.crawshaw@ma	Yellowstone Ins. Exchange/ MT Hosp. Assoc
	Jordan Crosby	Proponent	Great Falls MT	jyc@uazh.com	Montana Defense Trial Lawyers
	Al Smith	Opponent	Helena MT	monttla@mt.net	Montana Trial Lawyers Association
	Anders Blewett	Opponent	Great Falls MT	anders.blewett@gmail.com	N/A
	Justin Stalpes	Opponent	Bozeman MT	justin@becklawyers.	N/A

MINUTES

MONTANA SENATE 67th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS, LABOR, AND ECONOMIC AFFAIRS

Call to Order: Chair Steve Fitzpatrick, on February 25, 2021 at 8:00 AM, in Room 422 Capitol

ROLL CALL

Members Present in the Committee Room:

Sen. Steve Fitzpatrick, Chair (R)
Sen. Gordon Vance, Vice Chair (R)
Sen. Jason W. Ellsworth (R)
Sen. Terry Gauthier (R)
Sen. Bruce Gillespie (R)
Sen. Jason D. Small (R)
Sen. Mark Sweeney (D)

Members Present by Zoom Video Conference:

Sen. Carlie Boland, Vice Chair (D)
Sen. Mike Fox (D)
Sen. Christopher Pope (D)

Members Excused:

Sen. Cary Smith (R)

Members Absent: None

Staff Present: Olivia Hopkins, Committee Secretary
Clara Bentler, Remote Meeting Coordinator
Sonja Nowakowski, Legislative Branch
Erin Sullivan, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 273, 2/22/2021; SB 275, 2/22/2021; SB 296, 2/22/2021; SB 297, 2/22/2021; SB 301, 2/22/2021; SB 323, 2/22/2021; SB 363, 2/22/2021; SB 364, 2/22/2021

Executive Action: SB 234, SB 251, SB 278, SB 289

08:01:45 Chair Fitzpatrick
08:02:06 Sen. Boland
08:02:11 Chair Fitzpatrick

HEARING ON SB 296

Opening Statement by Sponsor:

08:02:48 Sen. Steve Hinebaugh (R), SD 18, opened the hearing on SB296, Revise civil liability laws related to an estate in real property.

Proponents' Testimony:

08:04:37 Charles Denowh, United Property Owners of Montana (UPOM)
[EXHIBIT\(bus40a01\)](#)

08:07:10 Conner Nicklas, PRO Wyoming
[EXHIBIT\(bus40a02\)](#)

Opponents' Testimony:

08:11:08 Alan Olson, Montana Petroleum Association (MPA)

Informational Testimony: None

Questions from Committee Members and Responses:

08:14:47 Sen. Gillespie
08:15:19 Mr. Denowh, UPOM
08:15:35 Sen. Gauthier
08:15:58 Mr. Olson, MPA
08:16:23 Sen. Boland
08:16:43 Mr. Olson

Closing by Sponsor:

08:16:58 Sen. Hinebaugh

HEARING ON SB 323

Opening Statement by Sponsor:

08:19:13 Sen. Chris Friedel (R), SD 26, opened the hearing on SB323, Generally revise Montana Administrative Procedure Act.

[EXHIBIT\(bus40a03\)](#)

Proponents' Testimony:

08:22:12 Kendall Cotton, Frontier Institute
08:25:17 Henry Kriegel, Americans for Prosperity - Montana
08:28:44 Beth Brennenman, Disability Rights Montana

Opponents' Testimony:

08:30:41 Anne Hedges, Montana Environmental Information Center

Informational Testimony: None

Questions from Committee Members and Responses:

08:34:23 Sen. Pope
08:35:12 Sen. Friedel
08:36:05 Sen. Pope
08:37:28 Sen. Friedel
08:37:44 Sen. Pope
08:37:52 Sen. Gillespie
08:38:02 Sen. Friedel

Closing by Sponsor:

08:38:42 Sen. Friedel

HEARING ON SB 301

Opening Statement by Sponsor:

08:39:17 Sen. Theresa Manzella (R), SD 44, opened the hearing on SB301, Provide statewide uniformity regarding wages/benefits for political subdivisions.

Proponents' Testimony: None

Opponents' Testimony:

08:41:42 Tim Burton, Montana League of Cities and Towns
[EXHIBIT](#)(bus40a04)

Informational Testimony: None

Questions from Committee Members and Responses:

08:43:28 Sen. Pope
08:44:32 Sen. Manzella
08:45:45 Sen. Pope
08:46:19 Sen. Manzella
08:46:32 Sen. Pope

Closing by Sponsor:

08:46:41 Sen. Manzella

08:47:18 Vice Chair Vance assumed the duties of the chair.

HEARING ON SB 363

Opening Statement by Sponsor:

08:47:23 Sen. Steve Fitzpatrick (R), SD 10, opened the hearing on SB363, Revise insurance laws related to annuities.

Proponents' Testimony:

08:49:02 Jon Metropoulos, American Council of Life Insurers

Opponents' Testimony:

08:51:43 Jackie Jones, Office of the Montana State Auditor, Commissioner of Securities and Insurance

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

08:57:16 Sen. Fitzpatrick

HEARING ON SB 364

Opening Statement by Sponsor:

08:57:32 Sen. Steve Fitzpatrick (R), SD 10, opened the hearing on SB364, Revise insurance laws.

Proponents' Testimony:

08:58:10 Jon Metropoulos, American Council of Life Insurers

08:59:48 Jackie Jones, Office of the Montana State Auditor, Commissioner of Securities and Insurance

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

09:02:23 Sen. Fitzpatrick

09:02:34 Sen. Fitzpatrick assumed the duties of the chair.

HEARING ON SB 273

Opening Statement by Sponsor:

09:03:12 Sen. Mark Sweeney (D), SD 39, opened the hearing on SB273, Generally revise laws related to agricultural equipment repair.

Proponents' Testimony:

09:08:16 Rachel Prevost, Montana Farmers Union (MFU)

09:08:54 Dave Kesler, rancher

09:12:42 McKenna Sellers, Northern Plains Resource Council

09:14:03 Walter Schweitzer, MFU

EXHIBIT(bus40a05)

09:15:20 Sen. Ellsworth entered the meeting.

09:17:06 Rep. Katie Sullivan, HD 89

09:17:43 Sarah Rachor, MFU

EXHIBIT(bus40a06)

09:20:53 Gay Gordon-Byrne, The Repair Association

EXHIBIT(bus40a07)

09:24:22 Erik Somerfeld, farmer
09:28:18 Ron Harmon, Big Equipment

[EXHIBIT](#)(bus40a08)

09:31:03 Kevin O'Reilly, United States Public Interest Research Group

[EXHIBIT](#)(bus40a09)

Additional Testimony Received:

[EXHIBIT](#)(bus40a10)

Opponents' Testimony:

09:33:20 Brad Griffin, Montana Equipment Dealers Association (MEDA)
09:35:35 Scott Reichner, former state representative
09:36:26 Brion Torgerson, citizen

[EXHIBIT](#)(bus40a11)

09:38:52 Tami Christensen, citizen

[EXHIBIT](#)(bus40a12)

Additional Testimony Received:

[EXHIBIT](#)(bus40a13)

Informational Testimony: None

Questions from Committee Members and Responses:

09:40:50 Sen. Gillespie
09:42:11 Mr. Schweitzer, MFU
09:43:57 Sen. Gillespie
09:44:43 Mr. Torgerson, citizen
09:45:24 Sen. Boland
09:47:38 Mr. Somerfeld, citizen
09:47:17 Sen. Boland
09:47:29 Sen. Sweeney
09:48:59 Chair Fitzpatrick
09:49:46 Mr. Griffin, MEDA
09:50:42 Chair Fitzpatrick
09:50:50 Mr. Griffin
09:51:35 Sen. Boland
09:52:39 Mr. Griffin
09:54:07 Sen. Boland
09:55:09 Mr. Griffin
09:55:30 Sen. Boland
09:55:40 Mr. Griffin
09:56:10 Sen. Pope
09:57:19 Mr. Schweitzer
09:59:42 Sen. Pope
10:00:33 Mr. Schweitzer
10:01:41 Sen. Gauthier
10:02:03 Mr. Prevost, MFU
10:02:38 Sen. Gillespie

10:03:13 Mr. Harmon, Big Equipment
10:05:39 Chair Fitzpatrick
10:06:12 Sen. Sweeney

Closing by Sponsor:

10:06:44 Sen. Sweeney

HEARING ON SB 297

Opening Statement by Sponsor:

10:11:39 Sen. Jason Ellsworth (R), SD 43, opened the hearing on SB297, ConnectMT Act to establish broadband deployment.

Proponents' Testimony:

10:17:38 Geoff Feiss, Montana Telecommunications Association (MTA)

[EXHIBIT\(bus40a14\)](#)

10:23:09 Mark Baker, attorney

[EXHIBIT\(bus40a15\)](#)

10:27:02 Tom Ezbery, Century Link
10:28:02 Margaret Morgan, T-Mobile
10:28:41 Aimee Grmoljez, Verizon Wireless
10:30:05 Darryl James, Montana Infrastructure Coalition
10:31:07 Bridger Mahlum, Montana Chamber of Commerce
10:31:40 Scott Reichner, former state representative
10:32:14 Jessie Luther, Big Sky Economic Development
10:32:50 Nanette Gilbertson, Montana Library Association
10:33:29 Nicole Rolf, Montana Farm Bureau Federation
10:34:24 Jean Branscum, Montana Medical Association
10:35:20 Tim Burton, Montana League of Cities and Towns

[EXHIBIT\(bus40a16\)](#)

Additional Testimony Received:

[EXHIBIT\(bus40a17\)](#)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

10:36:48 Sen. Small
10:37:31 Sen. Ellsworth
10:37:44 Chair Fitzpatrick
10:37:50 Sen. Ellsworth
10:38:16 Chair Fitzpatrick
10:38:25 Sen. Ellsworth
10:38:30 Sen. Pope
10:40:15 Mr. Feiss, MTA
10:42:09 Sen. Gauthier

10:42:30 Mr. Feiss

10:42:55 Sen. Smith entered the meeting.

10:43:04 Sen. Gauthier

10:43:31 Sen. Ellsworth

Closing by Sponsor:

10:44:33 Sen. Ellsworth

HEARING ON SB 275

Opening Statement by Sponsor:

10:46:21 Sen. Jeffrey Welborn (R), SD 36, opened the hearing on SB275, Generally revise the board of outfitters and outfitting laws and enforcement.

Proponents' Testimony:

10:50:25 Mac Minard, Montana Outfitters and Guides Association (MOGA)
[EXHIBIT\(bus40a18\)](#)

10:56:41 Tyler Moss, MOGA

11:00:17 John Way, Montana Board of Outfitters

11:04:06 Scott Vollmer, MOGA

11:07:00 Mike Bias, Fishing Outfitters Association of Montana (FOAM)

11:09:34 Jeffrey Florry, FOAM

11:10:17 Colin Cooney, Trout Unlimited

Opponents' Testimony:

11:12:29 Eric Melson, Backcountry Hunters and Anglers

11:14:13 Eric Clewis, Montana Wildlife Federation (MWF)

11:16:32 Kathleen Hadley, citizen

[EXHIBIT\(bus40a19\)](#)

Additional Testimony Received:

[EXHIBIT\(bus40a20\)](#)

Informational Testimony:

11:19:21 Ron Jendro, Department of Fish Wildlife and Parks (FWP)

Questions from Committee Members and Responses:

11:19:51 Sen. Pope

11:21:05 Mr. Jendro, FWP

11:21:43 Chair Fitzpatrick

11:22:11 Mr. Jendro

11:22:28 Chair Fitzpatrick

11:23:26 Mr. Jendro

11:23:45 Sen. Gauthier

11:24:32 Sen. Welborn

11:25:40 Sen. Gauthier

11:26:07 Sen. Fox

11:26:40 Mr. Jendro
 11:27:12 Sen. Sweeney
 11:28:46 Mr. Jendro
 11:30:57 Sen. Sweeney
 11:31:17 Mr. Jendro
 11:32:51 Sen. Sweeney
 11:33:06 Mr. Jendro
 11:34:17 Sen. Sweeney
 11:34:34 Mr. Jendro
 11:36:48 Sen. Sweeney
 11:37:23 Mr. Clewis, MWF
 11:37:56 Sen. Sweeney
 11:38:14 Mr. Clewis

Closing by Sponsor:

11:39:07 Sen. Welborn
 11:40:28 Chair Fitzpatrick
 11:42:20 Recess
 11:54:37 Reconvene

Sen. Ellsworth was excused.

EXECUTIVE ACTION ON SB 234

11:54:44 **Motion:** Sen. Vance moved that **SB 234 DO PASS**.
 11:54:55 **Motion/Vote:** Sen. Fitzpatrick moved that **SB 234 BE AMENDED**. Motion carried 10-0 by voice vote. Sen. Ellsworth was excused.

EXHIBIT(bus40a21)

11:55:29 **Motion/Vote:** Sen. Vance moved that **SB 234 DO PASS AS AMENDED**. Motion carried 7-3 by voice vote with Sen. Boland, Sen. Fox and Sen. Pope voting no. Sen. Ellsworth was excused.

EXECUTIVE ACTION ON SB 251

11:56:02 **Motion:** Sen. Vance moved that **SB 251 DO PASS**.
 11:56:20 **Motion/Vote:** Sen. Fitzpatrick moved that **SB 251 BE AMENDED**. Motion carried 10-0 by voice vote. Sen. Ellsworth was excused.

EXHIBIT(bus40a22)

11:57:23 **Motion/Vote:** Sen. Vance moved that **SB 251 DO PASS AS AMENDED**. Motion carried 7-4 by roll call vote with Sen. Boland, Sen. Fox, Sen. Pope and Sen. Sweeney voting no. Sen. Ellsworth voted by proxy.

EXECUTIVE ACTION ON SB 278

11:58:22 **Motion/Vote:** Sen. Vance moved that **SB 278 DO PASS**. Motion carried 7-4 by roll call vote with Sen. Boland, Sen. Fox, Sen. Pope and Sen. Sweeney voting no. Sen. Ellsworth voted by proxy.

EXECUTIVE ACTION ON SB 289

11:59:12 **Motion:** Sen. Vance moved that **SB 289 DO PASS**.

12:00:11 **Substitute Motion/Vote:** Sen. Vance made a Substitute Motion that **SB 289 BE TABLED**. Substitute Motion carried unanimously by roll call vote. Sen. Ellsworth voted by proxy.

12:00:19 Chair Fitzpatrick

12:01:22 Sen. Boland

12:01:58 Chair Fitzpatrick

ADJOURNMENT

Adjournment: 12:02 P.M.

Olivia Hopkins, Secretary

oh

Additional Documents:

EXHIBIT([bus40aad.pdf](#))

SENATE BUSINESS & LABOR

Exhibit No. 22

Date 2-25-2021

Amendments to Senate Bill No. 251 Bill No. SB 251

1st Reading Copy

Requested by Steve Fitzpatrick
For the (S) Business, Labor, and Economic Affairs

Prepared by Sonja Nowakowski
02/24/2021, 05:23:28

1. Page 3, line 18.

Following: "(1)"

Insert: "(a)"

2. Page 3.

Following: line 20

Insert: "(b) This section does not modify duties owed in accordance with 33-18-201."

3. Page 4, line 15.

Strike: "Evidence"

Insert: "Subject to subsection (6), evidence"

4. Page 5.

Following: line 22

Insert: "(6) A health care provider may not attempt to recover more than the amounts allowed as damages under this section from a plaintiff."

- END -

Explanation - Note: Because the page and line numbers referred to in these amendment instructions are required to match the page and line numbers of the official bill version being amended, they will not necessarily match the page and line numbers shown in any related Amendments in Context document.



2021 Session

Additional Documents

May include the following:

- **Business Report**
- **Roll Call -Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports**
- **Roll Call Votes**
- **Informational Item's**
- **Witness Statements**
- **Visitor Register**
- **Any other type of documents such as:**
 - Petitions, Pamphlets, Leaflets, Brochures, Emails, all documents given to Committee Secretary 24 hours after the meeting adjourned.**

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

BUSINESS REPORT

**MONTANA SENATE
67th LEGISLATURE - REGULAR SESSION**

SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

Date: Thursday, February 25, 2021

Place: Capitol

Time: 8:00 AM

Room: 422

BILLS and RESOLUTIONS HEARD:

SB 273 - Generally revise laws related to agricultural equipment repair - Sen. Mark Sweeney (D)

SB 275 - Generally revise the board of outfitters and outfitting laws and enforcement - Sen. Jeffrey Welborn (R)

SB 296 - Revise civil liability laws related to an estate in real property - Sen. Steve Hinebauch (R)

SB 297 - ConnectMT Act to establish broadband deployment - Sen. Jason Ellsworth (R)

SB 301 - Provide statewide uniformity regarding wages/benefits for political subdivisions - Sen. Theresa Manzella (R)

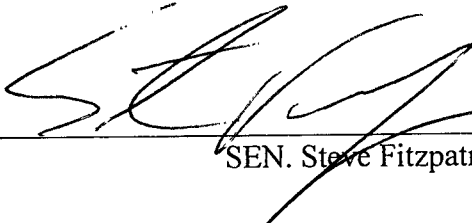
SB 323 - Generally revise Montana Administrative Procedure Act - Sen. Chris Friedel (R)

SB 363 - Revise insurance laws related to annuities - Sen. Steve Fitzpatrick (R)

SB 364 - Revise insurance laws - Sen. Steve Fitzpatrick (R)

EXECUTIVE ACTION TAKEN: SB 234, SB 251, SB 278, SB 289

Comments: None



SEN. Steve Fitzpatrick, Chair

MONTANA STATE SENATE
Roll Call
BUSINESS AND LABOR COMMITTEE

DATE: 2/25/2021

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
VICE CHAIR VANCE	✓	
VICE CHAIR BOLAND	✓	
SEN. ELLSWORTH		✓
SEN. FOX	✓	
SEN. GAUTHIER	✓	
SEN. GILLESPIE	✓	
SEN. POPE	✓	
SEN. SMALL	✓	
SEN. SMITH	✓	✓
SEN. SWEENEY	✓	
CHAIRMAN FITZPATRICK	✓	
11 Committee Members		



SENATE STANDING COMMITTEE REPORT

February 25, 2021

Page 1 of 1

Mr. President:

We, your committee on **Business, Labor, and Economic Affairs** report that **Senate Bill 234** (first reading copy -- white) **do pass as amended.**

Signed:

A handwritten signature in black ink, appearing to read "S. Fitzpatrick".

Senator Steve Fitzpatrick, Chair

And, that such amendments read:

1. Title, line 7.
Strike: "A DELAYED"
Insert: "AN IMMEDIATE"
2. Page 1, line 15.
Following: "utilize a"
Insert: "government or"
3. Page 1, line 17.
Following: "check"
Strike: "federal,"
4. Page 1, line 24 through line 26.
Strike: subsection (2) in its entirety
Renumber: subsequent subsections
5. Page 2, line 10.
Strike: "new hire records"
Insert: "the unemployment insurance rolls"
6. Page 2, line 10.
Strike: "directorate"
Insert: "directory"
7. Page 2, line 23.
Strike: "January 1, 2022"
Insert: "on passage and approval"

- END -

Committee Vote:

Yes 7, No 3

Fiscal Note Required X

SB0234001SC.slk



SENATE STANDING COMMITTEE REPORT

February 25, 2021

Page 1 of 1

Mr. President:

We, your committee on **Business, Labor, and Economic Affairs** report that **Senate Bill 251** (first reading copy -- white) **do pass as amended.**

Signed: _____

Senator Steve Fitzpatrick, Chair

And, that such amendments read:

1. Page 3, line 18.

Following: "(1)"

Insert: "(a)"

2. Page 3.

Following: line 20

Insert: "(b) This section does not modify duties owed in accordance with 33-18-201."

3. Page 4, line 15.

Strike: "Evidence"

Insert: "Subject to subsection (6), evidence"

4. Page 5.

Following: line 22

Insert: "(6) A health care provider may not attempt to recover more than the amounts allowed as damages under this section from a plaintiff."

- END -

Committee Vote:

Yes 7, No 4

Fiscal Note Required X

SB0251001SC.slk



SENATE STANDING COMMITTEE REPORT

February 25, 2021

Page 1 of 1

Mr. President:

We, your committee on **Business, Labor, and Economic Affairs** report that **Senate Bill 278**
(first reading copy -- white) **do pass.**

Signed:

A handwritten signature in black ink, appearing to read "S. Fitzpatrick", written over a horizontal line.

Senator Steve Fitzpatrick, Chair

- END -

Committee Vote:

Yes 7, No 4

Fiscal Note Required X

SB0278001SC.slk

COMMITTEE FILE COPY

BILL TABLED NOTICE

SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

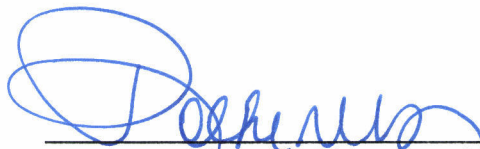
The **SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE** TABLED

**SB 289 - Revise employment application by eliminating reference to criminal record -
Sen. Brian Hoven (R)**

by motion, on **Thursday, February 25, 2021** (PLEASE USE THIS ACTION DATE IN LAWS
BILL STATUS).



(For the Committee)



(For the Secretary of the Senate)

12:45pm 2/25
(Time) (Date)

February 25, 2021 (12:12pm)

Olivia Hopkins, Secretary

Phone: 444-4610

MONTANA STATE SENATE
Roll Call Vote
BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

DATE 2/25/2021 BILL NO SB 251 MOTION NO. 1

MOTION: Do pass as amended

NAME	AYE	NO	Proxy
VICE CHAIR VANCE	✓		
VICE CHAIR BOLAND		✓	
SEN. ELLSWORTH	✓		✓
SEN. FOX		✓	
SEN. GAUTHIER	✓		
SEN. GILLESPIE	✓		
SEN. POPE		✓	
SEN. SMALL	✓		
SEN. SMITH	✓		
SEN. SWEENEY		✓	
CHAIRMAN FITZPATRICK	✓		
11 COMMITTEE MEMBERS			

7

4

MONTANA STATE SENATE
Roll Call Vote
BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

DATE 2/25/2021 BILL NO SB 278 MOTION NO. 1

MOTION: Do pass

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	<u>Proxy</u>
VICE CHAIR VANCE	✓		
VICE CHAIR BOLAND		✓	
SEN. ELLSWORTH	✓		✓
SEN. FOX		✓	
SEN. GAUTHIER	✓		
SEN. GILLESPIE	✓		
SEN. POPE		✓	
SEN. SMALL	✓		
SEN. SMITH	✓		
SEN. SWEENEY		✓	
CHAIRMAN FITZPATRICK	✓		
11 COMMITTEE MEMBERS			

MONTANA STATE SENATE
Roll Call Vote
BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

DATE 2/25/2021 BILL NO SB 289 MOTION NO. 1
MOTION: Table

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	<u>Proxy</u>
VICE CHAIR VANCE	✓		
VICE CHAIR BOLAND	✓		
SEN. ELLSWORTH	✓		✓
SEN. FOX	✓		
SEN. GAUTHIER	✓		
SEN. GILLESPIE	✓		
SEN. POPE	✓		
SEN. SMALL	✓		
SEN. SMITH	✓		
SEN. SWEENEY	✓		
CHAIRMAN FITZPATRICK	✓		
11 COMMITTEE MEMBERS			

SENATE PROXY

I, Senator Lee H. Overmyer, hereby authorize Senator James L. Arnold to vote my proxy before the Senate Business & Labor meeting held on Feb 25, 2021.

~~Senator Signature~~

Date

Said authorization is as follows: *(mark only one)*

- ☐ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

[illegible]

11

SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

SB 296 - Revise civil liability laws related to an estate in real property

PLEASE PRINT

[illegible]

S/B 296

SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

Thursday, February 25, 2021

SB 323 - Generally revise Montana Administrative Procedure Act

Sponsor: **Sen. Chris Friedel (R)**

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

SB 323

#5 SE

SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

SB 301 - Provide statewide uniformity regarding wages/benefits for political subdivisions

PLEASE PRINT

[illegible]

S/B 301

Visitors Register

SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

SB 363 - Revise insurance laws related to annuities

Sponsor: **Sen. Steve Fitzpatrick (R)**

[illegible]

SB 363

SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

Sponsor: **Sen. Jason Ellsworth (R)**

1111

[illegible]

SB 297

#1
MONTANA STATE SENATE
Visitors Register
SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS COMMITTEE

SB 273 - Generally revise laws related to agricultural equipment repair

PLEASE PRINT

[illegible]

SB 273

Senate Business, Labor and Economic Affair Committee Meeting: 2/25/2021					
Bill	Name	Position	Location	Email	Affiliation
SB 273	Kim Mangold	Proponent	Helena MT	kmangold@montana	Montana Farmers Union
	Rep. Katie Sullivan	Proponent	Missoula MT	sullivanhd89@gmail.c	N/A
	Gay Gordon-Byrne	Proponent	North River NY	ggbyrne@repair.org	The Repair Association
	Sarah Rachor	Proponent	Sidney MT	sarahrachor@gmail.c	MT Farmers Union
	Walter Schweitzer	Proponent	Geyser	wschweitzer@monta	MT Farmers Union
	William Downs	Proponent	Molt MT	willd.1991@yahoo.cc	N/A
	Ron Harmon	Proponent	Havre MT	ronharmon@bigequi	N/A
	Erik Somerfeld	Proponent	Power MT	riksomer@3rivers.net	N/A
	Kevin O'Reilly	Proponent	Jamaica Plain, MA	koreilly@pirg.org	US PIRG
	Tami Christensen	Opponent	Sidney MT	tricntyadm@midriver	N/A
SB 275	Brion Torgerson	Opponent	Great Falls	brion.torgerson@tor	N/A
	Walker Conyngham	Opponent	Missoula MT	walkconyngham@grr	Hellgate Hunters & Anglers
	Kathleen Hadley	Opponent	Deer Lodge, MT	kathyh1016@gmail.c	N/A
	Eric Clewis	Opponent	Helena MT	eclewis@mtwf.org	Montana Wildlife Federation
SB 301	Nick Gevock	Opponent	Helena MT	ngevock@mtwf.org	Montana Wildlife Federation
	Tim Burton	Opponent	Helena MT	tim.burton@mtleagu	Montana League of Cities and Towns
SB 296	Kevin J Braun	Proponent	Baker MT	kevinb@midrivers.co	N/A
	Conner Nicklas	Proponent	Cheyenne WY	conner@buddfalen.c	PRO Wyoming
	Al Smith	Opponent	Helena MT	monttla@mt.net	Montana Trial Lawyers Association
SB 323	Anne Hedges	Opponent	Helena MT	ahedges@meic.org	Montana Environmental Information Center

Mr. Chairman,

My name is Adam Gilbertson and I serve as the President of the Montana Equipment Dealers Association and am also the Vice-President of RDO Equipment Co.'s Montana business interests to include our five John Deere stores based in Kalispell, Great Falls, Missoula, Bozeman and Billings. Together these stores employ over 150 Montana residents and support the agriculture and construction companies working the land across the state. My wife Sarah and our 10-year-old son Henry call Laurel our home.

I am testifying today in opposition to SB 273.

The primary purpose of an equipment dealership is to ensure that the machines designed and manufactured for use can be supported locally in communities across Montana, the United States and the world. By nature, we see our role as a partnership with our growers and contractors to ensure that their machines are functioning at peak performance for the work to get completed. We are a part of, and deeply invested in, our local communities across the state-as we are often some of the largest employers. Our primary focus and gauge of success is measured on whether our customers can get their jobs done- and the machines they rely on are doing the work they were designed to do. This is where we find our value in the marketplace and we all strive to bring that value to our producers every day.

In order to keep our customers running and maximizing their uptime, we spend significant capital each and every year to ensure our technicians have the latest tools, equipment, safety protections, training and technology available. It is a huge investment that we take seriously to ensure that the work can get done.

While equipment has become more sophisticated, our equipment manufacturers fully support the customer's right to repair and have built advanced diagnostic capabilities into their equipment that are available to the owner, dealers, or even third-party repair shops. And for those producers who require even greater diagnostic capabilities, many industry partners provide subscription access to specialized diagnostic tools very similar to the one we as dealers use in the field to support them. Additionally, end users have access to on-board diagnostic tools via in-cab display or wireless interface, as well as manuals, product guides, mobile apps and product service information. All of this is available in the marketplace today and has been for over two years.

However, to the extent the owner has the right to lawfully repair his or her equipment, manufacturers cannot allow unauthorized modification of the embedded software code. Providing access to the source code not only undermines manufacturers' innovation and intellectual property rights, it also creates significant data privacy risks. Furthermore, allowing unauthorized and illegal tampering of safety and

emissions requirements such as changing engine horsepower or defeating emissions systems creates unknown liability issues for the individuals who modified the code, dealers who subsequently traded-in that equipment for resale, and/or any subsequent owners of that modified equipment.

More importantly, beyond the liability concerns, is the risk for potential safety impacts. It is our responsibility as dealers to ensure that our employees return to their families safely each night. Working on or operating equipment that has been modified (many times in unknown ways) poses a serious threat to the safety of our employees as well as any producers who may purchase that equipment in the used market.

Our organizations oppose this legislation because of the very significant public safety and environmental concerns I have raised in my comments. And because of the seriousness of these impacts, no Right to Repair bill has successfully moved out of any chamber in any state across the country. Ever.

I believe that your Committee has also received a letter of opposition to this bill from the Coalition Against Illegal Tampering.

Right to Repair is a complicated, yet important, issue. As mentioned, our producers currently have the ability today to lawfully repair their equipment. These solutions were enacted not because of a legislative mandate, but rather to fulfill a need in the marketplace. If the issue is truly that a customer desires to repair their own equipment or take it to a third-party repair shop, then there is no need for this legislation, because, as I have described, this ability fully exists today.

For all the reasons I have highlighted, the Montana Equipment Dealers Association and RDO Equipment Co. rise in opposition to SB 273.

Thank you for your consideration of this important matter.

Hopkins, Olivia

From: Kevin Braun <kevinb@middrivers.com>
Sent: Thursday, February 25, 2021 9:52 AM
To: Hopkins, Olivia
Subject: [EXTERNAL] FW: Proponent for SB296

Follow Up Flag: Follow up
Flag Status: Flagged

*Kevin J Braun
PO Box 707
22 Dance Hall Road
BAKER MT 59313
Cell: 406 978 2704
Email: KevinB@middrivers.com*

From: Kevin Braun
Sent: Thursday, February 25, 2021 9:32 AM
To: olivia.hopkings@mt.gov
Cc: [Charles Denowh](#); [Conner Nicklas](#); [Frank Falen](#)
Subject: Proponent for SB296
Importance: High

Reasons for SB 296.

- Over 500 hundred miles of industrial pipelines and a 75 mile by 5 miles gas storage field have easements negotiated all ready with liability language agree to in the State. All voluntary by both sides.
- These contracts are defendable in North Dakota And Wyoming. Not Montana.
- Land owner more app to sign which benefits the Company involved along with County and State revenues.
- Not Just for pipelines but all entities or individuals that come to a mutual liability agreement for what ever reason.
- Companies pull into yard and first easement always asks you to release them from any and all liability. Equals playing field.
- Does not affect State rules and regulation. Just makes defendable in court if a situation arises.
- Void due to criminal intent or failure to use 811.
- Once again must be agree to by both entities.

I want to thank the committee for your time. Please feel to contact myself with any and all question.

Thanks
Fallon County Commissioner
Kevin J Braun

*Kevin J Braun
PO Box 707
22 Dance Hall Road
BAKER MT 59313*

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 67th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: Chair Mark Noland, on March 18, 2021 at 08:30 AM, in Room 172 Capitol

ROLL CALL

Members Present:

Rep. Mark Noland, Chair (R)
Rep. Edward Buttrey, Vice Chair (R)
Rep. Katie Sullivan, Vice Chair (D)
Rep. Fred Anderson (R)
Rep. Willis Curdy (D)
Rep. Neil Duram (R)
Rep. Ross H. Fitzgerald (R)
Rep. Moffie Funk (D)
Rep. Steven Galloway (R)
Rep. Steve Gist (R)
Rep. Steve Gunderson (R)
Rep. Derek J. Harvey (D)
Rep. Denley M. Loge (R)
Rep. Ron Marshall (R)
Rep. Sara Novak (D)
Rep. Kerri Seekins-Crowe (R)
Rep. Katie Zolnikov (R)

Members Excused:

Rep. Kim Abbott (D)
Rep. Andrea Olsen (D)
Rep. Rynalea Whiteman Pena (D)

Members Absent: None

Staff Present:

Jordee Bomgardner, Committee Secretary
Jameson Walker, Legislative Branch
Monte Cole, Remote Meeting Coordinator

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 234, 3/11/2021; SB 251, 3/11/2021; SB 253, 3/11/2021; HB 624, 3/11/2021

HEARING ON SB 251

Opening Statement by Sponsor:

08:33:46 Sen. Cary Smith (R), SD 27, opened the hearing on SB 251, Generally revise civil liability laws relating to damages.

Proponents' Testimony:

08:36:45 Todd O'Hair, Montana Chamber of Commerce

[EXHIBIT\(buh54a01\)](#)

[EXHIBIT\(buh54a02\)](#)

08:39:33 Rep. Harvey left the meeting.

Opponents' Testimony:

08:40:02 Jessie Luther, Montanan Hospital Association (MHA)

[EXHIBIT\(buh54a03\)](#)

08:42:57 Kiely Keane, Billings Clinic

08:46:43 Lieutenant Governor Kristen Juras, Governors Office (GOV)

08:48:33 Kelly Gallinger, Montana Defense Trial Lawyers (MDTL)

08:49:03 Rep. Whiteman Pena joined the meeting.

08:54:12 Aimee Grmoljez, Community Medical Center (CMC)

08:56:05 Anders Blewett, self

09:05:52 Rep. Olsen joined the meeting.

09:06:27 Chair Noland

09:06:48 Anders Blewett, self

09:08:34 Chair Noland

09:08:40 Vice Chair Sullivan left the meeting.

09:09:14 Forrest Ehlinger, Benefis Health System

[EXHIBIT\(buh54a04\)](#)

09:10:27 Ian McIntosh, American Property and Casualty Insurance Association (APCIA)

09:11:29 Chair Noland left the meeting.

09:13:19 Vice Chair Buttrey assumed the Chair.

09:13:27 Al Smith, Montana Trial Lawyers Association (MTLA)

Informational Testimony:

09:21:39 Bob Olsen, self

Questions from Committee Members and Responses:

09:22:40 Rep. Gist

09:23:42 Jessie Luther, MHA

09:24:00 Rep. Loge

09:24:24 Jessie Luther, MHA

09:24:45 Rep. Marshall

09:25:17 Rep. Gunderson left the meeting.

09:25:42 Forrest Ehlinger, Benefis Health System

09:26:08 Rep. Marshall

09:26:31 Rep. Harvey joined the meeting.

09:28:46 Kelly Gallinger, MDTL

09:29:07 Rep. Olsen
09:29:50 Anders Blewett, self
09:31:49 Rep. Gist
09:33:12 Jessie Luther, MHA
09:33:35 Bob Olsen, self
09:34:03 Rep. Gist
09:34:17 Bob Olsen, self
09:35:25 Rep. Marshall
09:36:57 Ian McIntosh, APCIA
09:37:38 Rep. Galloway
09:38:38 Ian McIntosh, APCIA
09:40:49 Rep. Olsen
09:41:35 Jessie Luther, MHA
09:41:49 Bob Olsen, self
09:44:42 Rep. Olsen
09:45:25 Anders Blewett, self
09:46:25 Chair Buttrey
09:46:36 Anders Blewett, self
09:47:59 Rep. Duram
09:48:26 Chair Buttrey
09:48:39 Bob Olsen, self

Closing by Sponsor:

09:49:11 Sen. C. Smith

09:51:35 Rep. Noland joined the meeting and assumed the Chair.

HEARING ON SB 253**Opening Statement by Sponsor:**

09:52:13 Sen. Greg Hertz (R), SD 6, opened the hearing on SB 253, Revise state income tax medical care savings account investment options.

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

09:54:35 Sen. Hertz

09:54:48 Chair Noland

09:58:30 Rep. Loge

HEARING ON SB 234

Opening Statement by Sponsor:

09:59:03 Sen. Gordon Vance (R), SD 34, opened the hearing on SB 234, Create the Unemployment Insurance Program Integrity Act.

Proponents' Testimony:

10:00:24 Joe Horvath, Opportunity Solutions Project (OSP)
10:02:16 Scott Sales, Governors Office (GOV)

Opponents' Testimony:

10:02:53 Scott Reichner, Equifax

[EXHIBIT\(buh54a05\)](#)

[EXHIBIT\(buh54a06\)](#)

[EXHIBIT\(buh54a07\)](#)

Informational Testimony:

10:07:32 Quinlan O'Connor, Montana Department of Labor and Industry (DLI)

Questions from Committee Members and Responses:

10:07:56 Rep. Gist
10:08:35 Quinlan O'Connor, DLI
10:09:57 Rep. Duram
10:10:29 Quinlan O'Connor, DLI
10:10:35 Rep. Galloway
10:12:27 Quinlan O'Connor, DLI
10:13:41 Rep. Olsen
10:14:56 Quinlan O'Connor, DLI
10:16:41 Rep. Olsen
10:17:53 Scott Reichner, Equifax
10:18:56 Rep. Curdy
10:20:53 Quinlan O'Connor, DLI
10:21:26 Rep. Gist
10:21:44 Scott Reichner, Equifax
10:22:08 Rep. Gist
10:22:26 Quinlan O'Connor, DLI
10:22:58 Rep. Harvey
10:23:19 Sen. Vance
10:23:59 Chair Noland
10:24:57 Quinlan O'Connor, DLI

Closing by Sponsor:

10:25:25 Sen. Vance

HEARING ON HB 624

Opening Statement by Sponsor:

10:26:46 Rep. Alice Buckley (D), HD 63, opened the hearing on HB 624, Establish a business task force on child care.

Proponents' Testimony:

10:30:28 Sen. Sales
10:33:52 Todd O'Hair, Montana Chamber of Commerce
10:36:17 Mark Kelley, self

EXHIBIT(buh54a08)

10:38:42 Mike Halligan, Washington Companies
10:42:09 Nanette Gilbertson, Montana Advocates for Children (MAC)
10:43:21 Heather O'Hara, Montana Hospital Association (MHA)
10:45:23 Kali Wicks, Blue Cross Blue Shield of Montana (BCBSMT); Women's Foundation of Montana (WFD)

EXHIBIT(buh54a09)

10:47:07 Kathleen O'Leary, Montana Department of Labor and Industry (DLI)

Opponents' Testimony: None**Informational Testimony:**

10:50:00 Jamie Palagi, Montana Department of Health and Human Services (DPHHS)
10:50:28 Caitlin Jensen, Zero to Five Montana

EXHIBIT(buh54a10)

10:51:00 Rob Grunewald, self

EXHIBIT(buh54a11)**Questions from Committee Members and Responses:**

10:52:15 Rep. Gist
10:52:51 Mike Halligan, Washington Companies
10:53:50 Rep. Duram
10:57:23 Nanette Gilbertson, MAC
10:58:22 Rep. Galloway
11:00:53 Rep. Buckley
11:01:03 Rep. Marshall left the meeting.
11:01:35 Rep. Anderson
11:02:03 Rob Grunewald, self
11:03:14 Rep. Curdy
11:03:58 Rob Grunewald, self

Closing by Sponsor:

11:04:57 Rep. Buckley

11:05:58 Vice Chair Sullivan joined the meeting.
11:06:08 Chair Noland
11:07:42 Vice Chair Sullivan
11:07:50 Jameson Walker, Legislative Services Division (LSD)

ADJOURNMENT

Adjournment: 11:08:11

Jordee Bomgardner, Secretary

jb

Additional Documents:

EXHIBIT([buh54aad.pdf](#))

SB 251 Clarifies Medical Expense Recoveries

Compensatory damages exist for the purpose of making an injured party whole, not to enrich that injured person. When an injured party's medical expenses are paid by health insurance or government programs like Medicare or Medicaid, the total payouts actually made to the health care providers should represent the upper limit of compensatory damages recoverable in a lawsuit for medical expenses. To allow a claimant to recover more than what the doctors and hospitals are actually paid would permit a windfall recovery, which would not be consistent with the basic principles of compensatory damages.

Unfortunately, current statute, M.C.A. §27-1-308, as interpreted by the Montana Supreme Court, allows personal injury plaintiffs to introduce evidence and recover as compensatory damages charges that the claimants' health care providers have discounted or written off pursuant to the terms of insurance contracts or government programs. Even though the doctors were never paid these written-off amounts and the claimant never owed these sums, current Montana law allows personal injury lawyers to claim that the "reasonable value of the medical treatment" includes these written-off amounts never paid to the health care providers.

The fallacy of this approach can be seen by in the facts of the case that created this situation. In *Meek v. Montana Eighth Judicial District Court*, 379 Mont. 150 (2015), the plaintiff died from injuries incurred in a fall at a business. She received treatment covered by Medicare, with supplemental coverage through Blue Cross/Blue Shield. Before accounting for write-offs and disallowed amounts, the medical bills totaled \$197,154.93. But the real cost of the treatment – the amount actually paid to the doctors – amounted to less than 40% of that bill: only \$70,711.26. The Montana Supreme Court nonetheless ruled that courts must admit the full, undiscounted invoiced amounts as evidence of the value of the medical treatment even though these amounts were never paid or owed to the health care providers. These inflated figures, when presented to juries, cause confusion and can lead to enormous windfall damages awards.

SB 251 would solve this costly problem and restore common sense to the way Montana courts determine medical expense damages. Sums never paid to a claimant's health care providers and which the claimant never owed to anyone cannot be understood to be either "damages" or "compensatory" in any way. Instead, these amounts constitute nothing more than an illusion of damages: dollars that might have been spent but never were. SB 251 would re-define recoverable medical expense damages so these illusory, phantom damages are not part of any award. Further, SB 251 will narrow future medical expense damages to those sums necessarily expended to ensure that the claimant will receive the needed care, eliminating recovery of sums in excess of the actual cost to make that care available. With SB 251, Montana would join several other states that have addressed the recovery of medical expense damages through legislation to ensure that lawsuit recoveries for medical treatment make sense.¹

Preventing injury damages awards from being inflated by windfall recoveries will reduce inappropriate payouts and prevent an unnecessary burden on small businesses and others confronted by lawsuits.

¹ Source: <http://www.atra.org/issue/phantom-damages-reform/>

SB 251	
DAMAGES RECOVERABLE IN PERSONAL INJURY LAWSUITS FOR MEDICAL TREATMENT	
Bill Provision And Brief Description Of The Change	What Is The Purpose Of This Section Of The Bill And How Does It Seek To Accomplish This Goal?
Section 1 Amends § 27-1-202 by adding a sentence to link this section to the measure of medical expense damages in § 27-1-308.	Adds to the existing declaration of the right to recover compensatory damages a clarifying statement that the measure of the damages recoverable for the value of medical treatment is set forth in 27-1-308. The purpose of this addition is to prevent any court interpretation that the broad right declared in § 27-1-202 is inconsistent with § 27-1-308. Although § 27-1-202 establishes a general right to recover for injuries wrongfully incurred, the extent of that right is constrained by the way the reasonable value of medical care to treat those injuries is properly assessed. Under the bill, § 27-1-308 will establish the standard for determining the dollar value of the medical treatment received by a claimant. Section 1 reconciles those two statutory sections.
Section 2 Amends § 27-1-302 by adding a sentence to connect the declaration that damages be reasonable to the measure of medical expense damages in § 27-1-308.	Adds to the current statutory declaration that damages must be reasonable a clarification that an award of damages for medical treatment that exceeds the amounts allowed by § 27-1-308 would be unreasonable and excessive. This addition ensures that § 27-1-302 is consistent with § 27-1-308, and that there is only one standard for determining the recoverable amount of damages for medical treatment. § 27-1-302 already requires that damages must be “reasonable.” The additional sentence clarifies that the new calculation method established by § 27-1-308 sets the upper limit on what can be considered “reasonable.” The additional sentence ensures that the two provisions will be read together as complementary, and not creating competing standards.
Section 3 Adds defined terms to § 27-1-308	This language creates all-encompassing definitions for “health care provider” and “medical services or treatment.” These terms are used extensively in § 27-1-308.
Section 4(1) – amends § 27-1-308 Displaces common law and prior statutes addressing recoverable amounts for medical treatment	Adds a sentence indicating that other possible sources of law bearing on the recoverable sums for medical expense damages are abrogated. Section 4(1)(B) ensures that this bill complies with Montana code related to unfair claim settlement practices. This addition ensures that no other source of law will create a conflict in deciding how to value medical treatment. Under the bill, in § 27-1-308 will determine how courts measure medical treatment damages in personal injury cases. It displaces all other possible sources of law that could conflict with § 27-1-308.
Section 4(2) – amends § 27-1-308	Eliminates prior language for limited application of collateral source payments with offsets for insurance premiums, and replaces with a

Replaces current process for applying collateral source payments with a limitation on recoverable sums based on payments made or actually necessary to satisfy treatment charges.	definition of recoverable amounts for medical treatment that is tied to what the providers were actually paid or will be necessary to satisfy charges that are still owing at the time of trial or that will be necessary in the future.
Section 4(3) – amends § 27-1-308 Replaces post-trial judicial hearing procedure to determine possible reduction of award for collateral source payments with a limitation on the evidence that may be introduced at trial on the value of the treatment provided or expected in the future.	This change creates a substantive limit on medical treatment damages. Only the sums paid to the providers, or the amounts actually necessary to satisfy charges still owing or that will be necessary in the future, can be awarded. Replaces the current post-trial hearing procedure in which the court considers and decides whether and to what extent an award may be reduced by collateral payments, and instead restricts evidence that a jury may hear to only the payments that medical treatment providers have collected, to sums that would actually be paid to the providers under applicable coverage, or if no coverage applies then to the Medicare reimbursement rate for the treatment. The jury will hear only evidence of what the treatment providers were paid, or would be paid under applicable insurance, or what Medicare would pay if the plaintiff is completely uninsured. No information of amounts disallowed, written off, or otherwise not paid or payable will be admitted or can be used to inflate the damages.
Section 4(4) – amends § 27-1-308 Adds a provision requires a reduction for any pre-trial payments of the plaintiff's medical expenses made on behalf of the defendant, or for the application of other collateral source payments.	This section ensures that pre-trial payments made on behalf of a defendant to cover some or all of a plaintiff's medical treatment will be credited against the award. Also, other allowed collateral source payments will reduce the award.
Section 4(5) – amends § 27-1-308 Clarifies that contractual subrogation rights may allow for subrogation.	If subrogation is allowed under the terms of the contract, or under state or federal law, then recovery may be sought from a plaintiff from an award of medical expense damages.
Section 4(6) – amends § 27-1-308	Amendment in the Senate that a health care provider may not attempt to recover from a plaintiff more than the amounts allowed as damages.
Section 5	This bill will become effective upon passage and approval.
Effective date	
Section 6	The bill's provisions will apply to new claims that accrue on or after the effective date.
Accrual	

SENATE BILL NO. 251

INTRODUCED BY C. SMITH

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO DAMAGES IN LAWSUITS; PROVIDING THE MEASURE OF DAMAGES RECOVERABLE FOR MEDICAL SERVICES OR TREATMENT IN ACTIONS ARISING FROM BODILY INJURY OR DEATH; PROVIDING THAT DAMAGES IN ANY ACTION ARISING FROM BODILY INJURY OR DEATH EXCEEDING CERTAIN AMOUNTS ARE UNREASONABLE, UNCONSCIONABLE, AND GROSSLY OPPRESSIVE CONTRARY TO SUBSTANTIAL JUSTICE; ABROGATING THE COMMON LAW COLLATERAL SOURCE RULE, COURT DECISIONS, AND ALL PRIOR STATUTES APPLICABLE TO DETERMINING THE AMOUNTS RECOVERABLE BY PLAINTIFFS AS DAMAGES FOR MEDICAL SERVICES OR TREATMENT RELATING TO MEDICAL SERVICES OR TREATMENT; SETTING JURY CONSIDERATIONS FOR AWARDS OF MEDICAL SERVICES OR TREATMENT; PROVIDING DEFINITIONS; AMENDING SECTIONS 27-1-202, 27-1-302, 27-1-307, AND 27-1-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-202, MCA, is amended to read:

"27-1-202. Right to compensatory damages. Every person who suffers detriment from the unlawful act or omission of another may recover from the person in fault a compensation ~~therefor~~ for it in money, which is called damages. The measure of the damages recoverable from the person in fault for the reasonable value of medical services or treatment in actions arising from bodily injury or death is set forth in 27-1-308."

Section 2. Section 27-1-302, MCA, is amended to read:

"27-1-302. Damages to be reasonable. (1) Subject to subsection (2), ~~Damages~~ damages must in all cases be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages contrary to substantial justice, no more than reasonable damages can be recovered.

(2) In any action arising from bodily injury or death, damages exceeding amounts provided in 27-1-308(2) are unreasonable, unconscionable, and grossly oppressive contrary to substantial justice."

Section 3. Section 27-1-307, MCA, is amended to read:

"27-1-307. Definitions. As used in 27-1-308 and this section:

(1) "Collateral source" means a payment for something that is later included in a tort award and that is made to or for the benefit of a plaintiff or is otherwise available to the plaintiff:

(a) for medical expenses and disability payments under the federal Social Security Act, any federal, state, or local income disability act, or any other public program;

(b) under any health, sickness, or income disability insurance or automobile accident insurance that provides health benefits or income disability coverage, and any other similar insurance benefits available to the plaintiff, except life insurance;

(c) under any contract or agreement of any person, group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except gifts or gratuitous contributions or assistance;

(d) any contractual or voluntary wage continuation plan provided by an employer or other system intended to provide wages during a period of disability; and

(e) any other source, except the assets of the plaintiff or of the plaintiff's immediate family if the plaintiff is obligated to repay a member of the plaintiff's immediate family.

(2) "Health care provider" includes hospitals, institutions, laboratories, doctors, physicians, optometrists, dentists, nurses, therapists, and any other medical or health care facilities, professionals or persons who diagnose, evaluate, treat, or otherwise deliver medical services or treatment to a plaintiff.

(3) (a) "Medical services or treatment" means any actions taken by a health care provider to observe, identify, diagnose, stabilize, address, ameliorate, correct, remedy, rehabilitate, manage, combat, or care for a plaintiff's injury, condition, disease, or disorder, or symptoms of a plaintiff's injury, condition, disease, or disorder.

(b) The term includes any equipment, facilities, medicines, drugs, prescriptions, devices, or products provided or applied to a plaintiff by a health care provider or consumed by a plaintiff at a health care provider's direction.

~~(2)~~(4) "Person" includes individuals, corporations, associations, societies, firms, partnerships, joint-stock companies, government entities, political subdivisions, and any other entity or aggregate of individuals.

~~(3)~~(5) (a) "Plaintiff" means a person who alleges to have sustained bodily injury, or on whose behalf recovery for bodily injury or death is sought, or who would have a beneficial, legal, or equitable interest in a recovery.

(b) The term includes:

- (i) a legal representative;
- (ii) a person with a wrongful death or surviving cause of action;
- (iii) a person seeking recovery on a claim for loss of consortium, society, assistance, companionship, or services; and
- (iv) any other person whose right of recovery or whose claim or status is derivative of one who has sustained bodily injury or death."

Section 4. Section 27-1-308, MCA, is amended to read:

"27-1-308. ~~Collateral source reductions in~~ Allowed recovery and permissible evidence - reasonable value of medical or health care services or treatment -- actions arising from bodily injury or death -- subrogation rights. (1) (a) The purpose of this section is to abrogate the common law collateral source rule, court decisions, and all prior statutes applicable to determining the amounts recoverable by plaintiffs as damages for medical services or treatment.

(b) This section does not modify duties owed in accordance with 33-18-201.

(2) In an action arising from bodily injury or death when the total award against all defendants is in excess of \$50,000 and the plaintiff will be fully compensated for the plaintiff's damages, exclusive of court costs and attorney fees, a plaintiff's recovery must be reduced by any amount paid or payable from a collateral source that does not have a subrogation right, a plaintiff's recovery may not exceed amounts actually:

(a) paid by or on behalf of the plaintiff to health care providers that rendered reasonable and necessary medical services or treatment to the plaintiff;

(b) necessary to satisfy charges that have been incurred and at the time of trial are still owing and payable to health care providers for reasonable and necessary medical services or treatment rendered to the plaintiff; and

(c) necessary to provide for any future reasonable and necessary medical services or treatment for the plaintiff.

~~(2) Before an insurance policy payment is used to reduce an award under subsection (1), the following amounts must be deducted from the amount of the insurance policy payment:~~

- ~~(a) the amount the plaintiff paid for the 5 years prior to the date of injury;~~
- ~~(b) the amount the plaintiff paid from the date of injury to the date of judgment; and~~
- ~~(c) the present value of the amount the plaintiff is obligated to pay to keep the policy in force for the period for which any reduction of an award is made pursuant to subsection (3).~~

(3) The jury shall determine its award for the reasonable value of medical services or treatment without consideration of any charges for medical services or treatment that were included on health care providers' bills but resolved by way of contractual discount, price reduction, disallowance, gift, write-off, or otherwise not paid collateral sources. After the jury determines its award, reduction of the award must be made by the trial judge at a hearing and upon a separate submission of evidence relevant to the existence and amount of collateral sources. Evidence Subject to subsection (6), eEvidence is is-admissible to establish the reasonable value of medical services or treatment is limited to evidence identifying the amounts actually:

at the hearing to show that the plaintiff has been or may be reimbursed from a collateral source that does not have a subrogation right. If the trial judge finds that, at the time of hearing, it is not reasonably determinable whether or in what amount a benefit from a collateral source will be payable, the judge shall:

~~(a) order any person against whom an award was rendered and who claims a deduction under this section to make a deposit into court of the disputed amount, at interest~~

(a) paid by or on behalf of the plaintiff, regardless of the source of payment, to satisfy the financial obligation for medical services or treatment that the plaintiff received; and

~~(b) reduce the award by the amount deposited. The amount deposited and any interest on that amount are subject to the further order of the court, pursuant to the requirements of this section.~~ necessary to satisfy the financial obligation for medical services or treatment rendered to the plaintiff that have been incurred but not yet satisfied. This evidence may not include any reference to sums that exceed the amount for which the unpaid charges could be satisfied if submitted to any health insurance covering the plaintiff or any public or government-sponsored health care benefit program for which the plaintiff is eligible, regardless of whether the incurred but not yet satisfied charges have been or will be submitted to the plaintiff's health insurance or public or government-sponsored health care benefit

program. If the plaintiff is not covered by any health insurance and is not eligible for any public or government-sponsored health care benefit program, evidence of the reasonable value of medical services or treatment incurred but not yet satisfied is limited to the medicare reimbursement rate in effect at the time the plaintiff's services or treatment occurred for the specific medical services or treatment rendered to the plaintiff.

(c) necessary to satisfy the financial obligation for any reasonable and necessary future medical services or treatment of the plaintiff. This evidence may not include any reference to sums that exceed the amount for which the future charges of health care providers could be satisfied if submitted to any health insurance covering the plaintiff or any public or government-sponsored health care benefit program for which the plaintiff is eligible. If the plaintiff is not covered by any health insurance and is not eligible for any public or government-sponsored health care benefit program, evidence of the reasonable present value of any future reasonable and necessary medical services or treatment is limited to the medicare reimbursement rate in effect at the time of trial for the reasonable and necessary future medical services or treatment of the plaintiff.

(4) If prior to trial a defendant, a defendant's insurer or authorized representative, or any combination of the three, pays any part of the financial obligation for medical services or treatment provided to the plaintiff, then prior to the entry of judgment the court shall reduce the sum awarded to the plaintiff at trial by the amount of the payment or other collateral source as defined in 27-1-307(1).

(5) Except for subrogation rights specifically granted by state or federal law, law or provided by contract, there is no right to subrogation for any amount paid or payable to a plaintiff from a collateral source if for an award is reduced by that amount under entered as provided in subsection (1) (2).

(6) A health care provider may not attempt to recover more than the amounts allowed as damages under this section from a plaintiff."

NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 6. Applicability. [This act] applies to claims that accrue on or after [the effective date of this act].

March 18, 2021

Chairman Noland, Members of the Committee,

Thank you for the opportunity to provide testimony on SB 251.

My name is Forrest Ehlinger, and I serve as the Chief Resources Officer and Executive Vice President for Benefis Health System in Great Falls. Our health system provides acute healthcare services to a 42,000 square mile region of northcentral Montana, and we oppose SB 251 in its current amended format.

When health systems work with health insurers to negotiate payment rates as part of our standard contracting process, the parties come together to agree to reasonable payment rates. This bill would prohibit hospitals from attempting to collect such agreed-upon rates for patients whose care results from motor vehicle and other types of accidents. Hospitals take care of our patients' care needs regardless of how or why those needs arise. Thus, limiting our ability to collect payment based on such a factor unduly penalizes hospitals in treating accident victims.

Under this legislation, hospitals would become limited in our ability to collect standard rates from certain insurers for accident-related claims, while other parties involved in such claims—including insurance companies and plaintiff attorneys—stand to benefit by reducing settlement monies that rightfully should have gone to hospitals.

Benefis favors the establishment of transparency surrounding settlements received in civil liability claims. We also support the development of clear guidelines related to the handling of such claims. However, the current bill under consideration threatens to restrict health systems across the state from executing collecting on our currently negotiated rates.

I ask that you either oppose SB 251 or remove amendments from the bill.

Thank you for your consideration.



2021 Session

Additional Documents

May include the following:

- **Business Report**
- **Roll Call - Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports**
- **Roll Call Votes**
- **Informational Item's**
- **Witness Statements**
- **Visitor Register**
- **Any other type of documents such as:**
 - Petitions, Pamphlets, Leaflets, Brochures, Emails, all documents given to Committee Secretary 24 hours after the meeting adjourned.**

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

BUSINESS REPORT

**MONTANA HOUSE OF REPRESENTATIVES
67th LEGISLATURE - REGULAR SESSION**

HOUSE BUSINESS AND LABOR COMMITTEE

Date: Thursday, March 18, 2021

Place: Capitol

Time: 08:30 AM

Room: 172

BILLS and RESOLUTIONS HEARD:

HB 624 - Establish a business task force on child care - Rep. Alice Buckley (D)

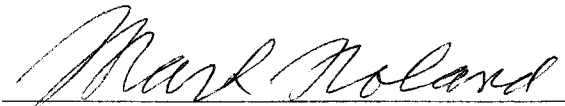
SB 234 - Create the Unemployment Insurance Program Integrity Act - Sen. Gordon Vance (R)

SB 251 - Generally revise civil liability laws relating to damages - Sen. Cary Smith (R)

SB 253 - Revise state income tax medical care savings account investment options - Sen. Greg Hertz (R)

EXECUTIVE ACTION TAKEN: None

Comments:

A handwritten signature in cursive script, reading "Mark Noland", is written over a horizontal line.

REP. Mark Noland, Chair



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

BUSINESS & LABOR COMMITTEE

ROLL CALL

DATE: 3-18-2021

NAME	PRESENT	ABSENT/EXCUSED
VICE CHAIR SULLIVAN	✓	
REP. CURDY	✓	
REP. OLSEN		✓
REP. FUNK	✓	
REP. ABBOTT		✓
REP. WHITEMAN PENA		✓
REP. FITZGERALD	✓	
REP. ANDERSON	✓	
REP. GALLOWAY	✓	
REP. LOGE	✓	
REP. SEEKINS-CROWE	✓	
REP. DURAM	✓	
REP. MARSHALL	✓	
REP. NOVAK	✓	
REP. GIST	✓	
REP. GUNDERSON	✓	
REP. ZOLNIKOV	✓	
REP. HARVEY	✓	
VICE CHAIR BUTTREY	✓	
CHAIR NOLAND	✓	

20 MEMBERS



2021 Legislative Session

WITNESS STATEMENTS

**The following is an assortment of
documents that are witness
statements.**

**“A witness statement is a signed document
recording the evidence of a witness. A
definition “a written statement signed by a
person which contains the evidence which that
person would be allowed to give orally.”**

WITNESS STATEMENT



March 16, 2021

To: Montana House Business & Labor Committee

The Missoula Area Chamber of Commerce supports HB 624. Finding ways to increase the amount of affordable, quality child care is important to the health of the business community both in Missoula and across the state.

The Missoula Chamber has been focused on the issue of child care for several years. Our Chamber's Workforce Development, Education and Recruitment committee identified it as a significant workforce challenge in 2018. Since that time we have conducted multiple surveys to gauge the need for expanded options in child care and the impact inadequate access has on the Missoula business community.

The Missoula Chamber has heard from its membership that a lack of access to affordable, quality child care is creating challenges for businesses in meeting their workforce needs. In our surveys, around half of those responding indicated they had scaled back or abandoned their career due to child care issues. This has a significant impact on the local economy. In order for businesses to grow and thrive, they need to be able to attract workers. A lack of access to affordable, quality child care makes that more difficult.

Over the past couple years our Chamber has worked with child care providers to identify potential business models that could help our community begin to address this need. It is vital that we begin addressing the need for expanded child care options at the state level in order to provide options for today's workforce as well as tomorrow's.

HB 624 brings a wide range of stakeholders to the table to find solutions to the challenges facing our state in regards to child care. There will be representatives from early childhood education, government and business, all working toward the common goal of solving a problem impacting our communities and our economy.

It has been our experience that when all the stakeholders are included at the table, the best solutions come to light. The task force created by HB 624 covers a wide range of industries and interests. This should allow for new ideas to be discussed and innovative solutions to be found. We hope you will join us in supporting this important piece of legislation.

Sincerely,

A handwritten signature in black ink that reads "Kim Latrielle". The signature is fluid and cursive, with the first name "Kim" and last name "Latrielle" clearly distinguishable.

Kim Latrielle
CEO

**WITNESS
STATEMENT**

Chairman Noland and Members of the House Business and Labor Committee:

On behalf of the Billings Chamber of Commerce and our 1,100 member businesses representing over 45,000 employees, I'm writing in support of House Bill 624.

Workforce continues to be a major obstacle for businesses in Yellowstone County. The limited talent pool stunts business growth, negatively impacting the economy. One major factor affecting the ability to recruit and retain talent is access to quality, affordable childcare, a problem faced by nearly 40% of Montana employers according to a study by the Bureau of Business and Economic Research. **What's more, the issue extends beyond today's workforce concerns: children lacking quality care and education today, during their most formative years developmentally, become the workforce of our future. Without focused solutions, we can expect our problems to continue.** Cheryl Oldham, senior vice president of the U.S. Chamber of Commerce Foundation recognizes this, **"It's clear that if we don't find long-term cross-sector solutions to this crisis, the negative impact on our workforce and economy will be felt for years to come."**

House Bill 624 would establish a task force of business leaders to make recommendations for incentivizing employer-supported early childcare, improving childcare access and affordability for employees, and enhancing business performance and workforce development. This innovative solution is **business-lead and privately funded, so it would not cost the state.**

We hope to help businesses in our community and throughout the state of Montana solve this problem. We respectfully ask this committee to be part of the solution as well. Please pass HB 624 and let's remove the obstacles holding our businesses back.

Regards,



Kelly McCandless

Director; Communication and Workforce Development
Billings Chamber of Commerce

Bomgardner, Jordae

From: leg-noreply@mt.gov
Sent: Wednesday, March 17, 2021 10:50 AM
To: LEG Applications Email Backup; LEG Committee-House Business & Labor testimony
Subject: Public Comment for Bill HB-624: Establish a business task force on child care
2021-03-18 08:30 AM - (H) Business and Labor Successfully Submitted on 03-17-21
10:50

Details:

Bill: HB-624: Establish a business task force on child care 2021-03-18 08:30 AM - (H) Business and Labor

Position: Proponent

Representing an Entity/Another Person: No

Organization: N/A

Name: Chris & Rebekah Nelson

Email: Rann6177@gmail.com

Phone: (406) 548-2308

City, State: Bozeman, MT

Written Statement: Child Care is not a government issue but rather an economic and business issue. In order to get Montana back to work and attract businesses and a workforce to Montana we need to think outside the box and get innovative with our incentives. Child care is one of those incentives. It not only solves a fundamental need to the working family it provides a valuable benefit for the workforce. Employers who offer such benefit attract highly motivated workers. Businesses across Montana are interested in providing this benefit to their employees as we have received numerous calls seeking advice on how to start their own onsite child care. As we look into this task force, it would be most beneficial to have these business leaders providing information on how to allow better opportunities to the businesses in order to incentivize them to provide this care. Having this task force can create guidance for businesses that are having to navigate the rules that legislature has in place for the licensing of such child care facilities. These rules originally were not created with the businesses onsite childcare concept in mind. All of this has led us to be a proponent for this bill.

Files:

Testify via Zoom: Yes

Zoom Method: Computer

Sponsor: Sen. Gordon Vance (R)

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Sponsor: **Sen. Cary Smith (R)**

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Thursday, March 18, 2021

HB 624 - Establish a business task force on child care

Sponsor: Rep. Alice Buckley (D)

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Sponsor: Sen. Greg Hertz (R)

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

House Business and Labor Remote Testimony Requests for Hearing 03-18-21; SB-234, -251, -253, HB-624							
Bill	Position	Name	Email	Affiliation	Location	Zoom Link	Notes
SB-234	Proponent	Joe Horvath	jhortvath@thefga.org	Opportunity Solutions Project	Naples, FL	Sent	
	Info Witness	Quinlan O'Connor	goconnor@mt.gov	Montana Dept of Labor & Industry	Helena	Sent	
SB-251	Opponent	Anders Blewett	anders.blewett@gmail.com	None	Great Falls	Sent	
		Forrest Ehlinger	robinbeatty@benefis.org	Benefis Health System	Great Falls	Sent	
		Ian McIntosh	imcintosh@crowleyfleck.com	American Property Casualty Insurance Assn.	Bozeman	Sent	
		Al Smith	monttla@mt.net	Montana Trial Lawyers Assn.	Helena	Sent	
SB-253	None						
HB-624	Proponent	Kali Wicks	kali_wicks@bcbsmt.com	Blue Cross Blue Shield of Montana	Helena	Sent	
		Rebekah Nelson	rann6177@gmail.com	None	Bozeman	Sent	
		Scott Eychner	seychner@mt.gov	Montana Dept of Labor & Industry	Helena	Sent	
		Kathleen O'Leary	kathleen.oleary@mt.gov	Montana Dept of Labor & Industry	Helena	Sent	
	Info Witness	Jamie Palagi	jpalagi@mt.gov	Dept of Public Health and Human Services	Helena	Sent	
		Caitlin Jensen	caitlinj@zerotofive.org	Zero to Five Montana	Helena	Sent	
		Rob Grunewald	rob.grunewald@mpls.frb.org	Federal Reserve Bank of Minneapolis	St. Paul, MN	Sent	

The New York Times

How Rich Hospitals Profit From Patients in Car Crashes

Hospitals use century-old lien laws to bypass insurers and charge patients, especially poorer ones, the full amount.



By Sarah Kliff and Jessica Silver-Greenberg

Published Feb. 1, 2021 Updated Feb. 12, 2021

When Monica Smith was badly hurt in a car accident, she assumed Medicaid would cover the medical bills. Ms. Smith, 45, made sure to show her insurance card after an ambulance took her to Parkview Regional Medical Center in Fort Wayne, Ind. She spent three days in the hospital and weeks in a neck brace.

But the hospital never sent her bills to Medicaid, which would have paid for the care in full, and the hospital refused requests to do so. Instead, it pursued an amount five times higher from Ms. Smith directly by placing a lien on her accident settlement.

Parkview is among scores of wealthy hospitals that have quietly used century-old hospital lien laws to increase revenue, often at the expense of low-income people like Ms. Smith. By using liens — a claim on an asset, such as a home or a settlement payment, to make sure someone repays a debt — hospitals can collect on money that otherwise would have gone to the patient to compensate for pain and suffering.

They can also ignore the steep discounts they are contractually required to offer to health insurers, and instead pursue their full charges.

The difference between the two prices can be staggering. In Ms. Smith's case, the bills that Medicaid would have paid, \$2,500, ballooned to \$12,856 when the hospital pursued a lien.

"It's astounding to think Medicaid patients would be charged the full-billed price," said Christopher Whaley, a health economist at the RAND Corporation who studies hospital pricing. "It's absolutely unbelievable."



Monica Smith outside her home in Garrett, Ind. "At first I thought it was a registration error," she said after the hospital did not bill her insurance. Amy Powell for The New York Times

The practice of bypassing insurers to pursue full charges from accident victims' settlements has become routine in major health systems across the country, court records and interviews show. It is most lucrative when used against low-income patients with Medicaid, which tends to pay lower reimbursement rates than private health plans.

In a memo that surfaced in 2014 litigation, a hospital in Washington State estimated that this practice generated \$10 million annually.

As part of its check-in process, a Catholic hospital in Oklahoma offers some accident victims a waiver to sign stating they do not want their health plan billed for care. One patient received the waiver shortly after a car accident in which her head hit the windshield. She said she had no recollection of signing the document, but faced a \$34,106 lien as a result.

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"The way they are spinning it is, you don't want to use your health insurance because someone else caused this," said Loren Toombs, an Oklahoma trial lawyer who represented the patient. "It's clearly a business tactic and a huge issue, but it's not always illegal."

Hospitals have come under scrutiny in recent years for increasingly turning to the courts to recover patients' unpaid bills, even in the midst of the coronavirus pandemic. Hospitals, many of which received significant bailouts last year, have used these court rulings to garnish patients' wages and take their homes.

But less attention has been paid to hospital lien laws, which many states passed in the early 20th century, when fewer than 10 percent of Americans had health coverage. The laws were meant to protect hospitals from the burden of caring for uninsured patients, and to give them an incentive to treat those who could not pay upfront.

A century later, hospital liens are most commonly used to pursue debts from car accident victims. The practice can be so lucrative, documents and interviews show, that some hospitals use outside debt collection companies to scour police records for recent accidents to make sure they identify which of their patients might have been in a wreck, so that they can pursue them with liens.

Some laws limit what share of a patient settlement a hospital can lay claim to, and others allow only nonprofit hospitals to collect debts this way. Certain states require hospitals to bill accident victims' health plans rather than using a lien. This approach is seen as more consumer-friendly because patients benefit from the discounts that health plans have negotiated on their behalf.

"If there is a patient that has viable coverage from multiple sources, it would be a reasonable position to seek payment from whoever is going to pay more," said Joe Fifer, chief executive of the Healthcare Financial Management Association, a trade group of hospital financial officers.

Mr. Fifer said that state and federal laws often dictate which insurer should be billed, and that hospitals regularly must navigate between health and auto insurers that claim the other is responsible. He advises member executives to be clear at the outset with patients about how the lien process works.

"I feel sorry for patients in these situations," Mr. Fifer said.

Going after widows and veterans

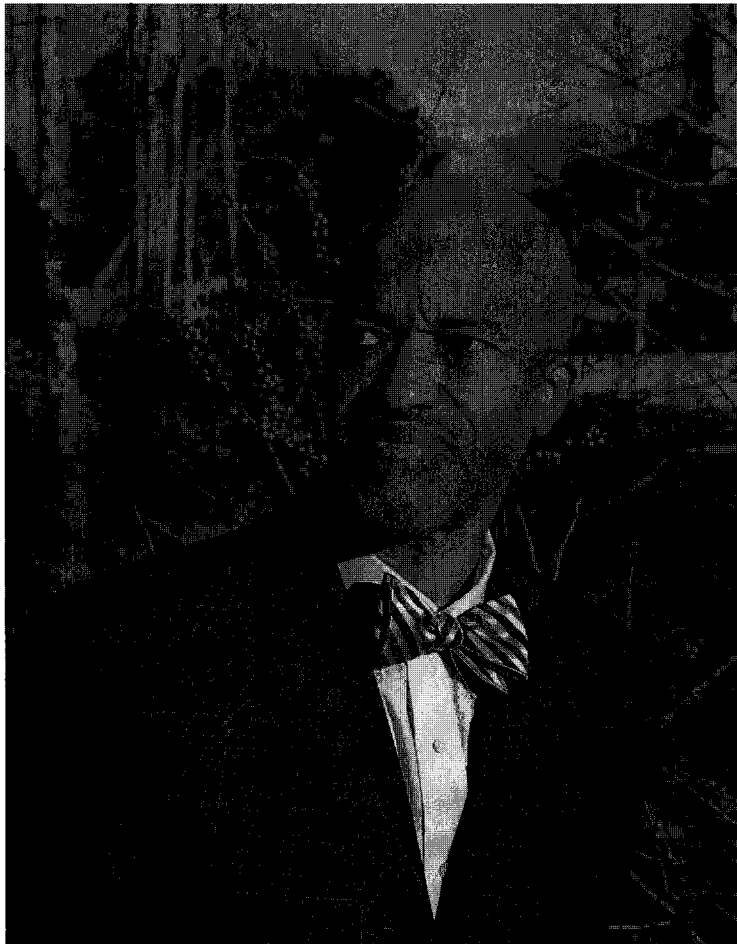
When states have permissive hospital lien laws, some hospitals take advantage in ways that hurt patients. These hospitals tend to be wealthier, The New York Times found, and many of those that received hundreds of millions of dollars in federal bailout funding during the pandemic are among the most aggressive in pursuing payment through hospital liens.

Community Health Systems, which owns 86 hospitals across the country, received about a quarter-billion in federal funds during the pandemic, according to data compiled by Good Jobs First, which researches government subsidies of companies.

One of its hospitals in Tennessee refused to bill Medicare or the veterans health insurance of Jeremy Greenbaum after a car crash aggravated an old combat wound to his ankle. Instead, the hospital filed liens in 2019 for the full price of his care, records show.

"I could cut off a finger and the V.A. would cover it," Mr. Greenbaum said, adding "the insurance is just that good." The worst part, Mr. Greenbaum said, was the nearly constant collection calls that made him feel like a "real deadbeat." Mr. Greenbaum is now part of a lawsuit against the hospital, Tennova Healthcare Clarksville, that accuses it of predatory lien practices.

Ann Metz, a spokeswoman for Tennova, said that "Tennessee state law allows hospitals to file provider liens as a way to ensure that health care providers can be paid for treatment."



"You are going into a fight with the hospital that you don't know the rules of," Dennis Denson said. Peyton Fulford for The New York Times

Multiple lawyers identified the WellStar Health System in the Atlanta area as another that frequently pursued liens against patients.

Dennis Denson, a 53-year-old logistics manager, was treated at a WellStar hospital for injuries he sustained after being rear-ended three years ago. Mr. Denson said he presented his health insurance card as soon as he got to the emergency room. But he is still fighting with the hospital, which, unlike the ambulance provider, didn't bill his health insurance. Instead, the hospital placed a \$13,469 lien against his auto accident settlement.

For Mr. Denson, the lien is like a cloud hanging over his recovery. To cover his ensuing bills — the cost of a replacement car; the chiropractic treatment; everyday expenses after a stint out of work — he had to go into debt.

"I really feel angry," Mr. Denson said. "You are going into a fight with the hospital that you don't know the rules of."

A WellStar spokeswoman said the hospital uses liens only when privately insured patients don't provide coverage. The hospital and Mr. Denson disagree on when proof of coverage was provided: He recalls giving it at the emergency room, while the hospital says it was not given until more than a year after the accident.



WellStar Kennestone Hospital in Marietta, Ga. The WellStar Health System frequently pursues liens against patients, multiple lawyers said. Peyton Fulford for The New York Times

Such liens can torpedo patients' credit scores and leave them unable to pay for needed follow-up care.

Mary Edmison, an 86-year-old widow, said she tried everything to get Mary Washington, a hospital in Fredericksburg, Va., to bill her insurance — Medicare and private coverage — for the treatment she received in a 2016 crash. She called; she went to the hospital's billing department; she sent a handwritten letter.

"Again and again, I've asked Mary Washington to send their bills through the proper channels," she wrote in a 2017 letter. "I don't know what their problem is."

In August 2017, the hospital sued her for more than \$6,000. Ms. Edmison, who has since settled the issue with the help of a lawyer, was shocked. "I'm on a fixed income and those kind of charges would have sunk me," she said.

Eric Fletcher, a spokesman for Mary Washington, declined to comment on Ms. Edmison's case but said the hospital complies with state and federal lien laws. "We never want a patient to endure hardship related to medical bills," he said.

Arguing that 'Medicaid is not insurance'

In the early 2010s, Indiana legislators passed a law that required hospitals to bill insured patients' coverage before pursuing additional debts with a lien.

The legislation initially specified Medicare, Medicaid and private health plans as those that had to be billed. At the last minute, Medicaid was taken out. Supporters of the new law paid little attention to the change, assuming that legislation requiring hospitals to bill "health insurance" would suffice.

The Parkview Hospital system, a nonprofit in Fort Wayne, Ind., saw things differently. Parkview was already known for having the second-highest health care prices in the country. Multiple trial lawyers in Indiana have identified it as the most aggressive hospital when it comes to liens.

Even after the lien reform, the hospital continued to bypass Medicaid patients' coverage and pursue its full-billed charges. Liens challenged in court, ranging from \$307 to \$117,272, most likely represent a small fraction of those filed against patients.

"Other hospitals don't do this — they abide by the law," said David Farnbauch, a trial lawyer who has sued Parkview over its lien practices.

Parkview has faced at least nine lawsuits over liens related to Medicaid. It has filed counterclaims against at least one patient, tacking interest and attorney fees onto the outstanding debt.

When Ms. Smith and other Medicaid beneficiaries sued Parkview over their liens this summer, the hospital responded by arguing that Medicaid is "government assistance" and not health insurance, thus not covered under the new lien law.

"Parkview denies that Medicaid coverage is insurance," the hospital argued in a June 2020 legal brief.

The hospital contended that patients should be held accountable for their medical bills rather than relying on the government. "By forcing hospitals like Parkview to submit its charges to the state-administered Medicaid program, the court will ignore the public policy goals of holding individuals responsible for their actions," Parkview argued.

Judge Craig Bobay said he noticed "a lot" of these cases coming into his courtroom in 2019 making the same arguments.

He rejected Parkview's claims last summer, finding that "Indiana plainly defines the term Medicaid as 'health insurance.'"

"Before filing a hospital lien, Parkview must first reduce its bill by the amount of benefits to which a patient is entitled under the terms of medical insurance, including Medicaid," he wrote.

Parkview Hospital declined an interview for this article but provided a statement from its chief legal officer, David Storey. He said the health system no longer filed liens against Medicaid patients. "Parkview has always taken a conservative and fair approach to collections," he said.

Ms. Smith received her full settlement in 2020, nearly four years after her accident.

"At first I thought it was a registration error, but shame on them for basically trying to get more money out of the situation," she said. "It felt like, what is even the point of having health insurance if you won't bill it?"

379 Mont. 150
349 P.3d 493
2015 MT 130

**Sharon MEEK, as Personal Representative
of the ESTATE OF JUDY J. MEEK,
Deceased, Plaintiff and Petitioner
MONTANA EIGHTH JUDICIAL DISTRICT
COURT, Cascade County, The Honorable
Jon A. Oldenburg, Presiding Judge,
Respondent.**

No. OP 14-0786.

Supreme Court of Montana.

May 13, 2015.

[349 P.3d 494]

[379 Mont. 150]

OPINION AND ORDER

¶ 1 This matter comes before the Court on a Petition for Writ of Supervisory Control filed by Petitioner Sharon Meek, as personal representative of the Estate of Judy J. Meek, arising from Cascade County Cause No. BDV-12-0657, *Meek v. Bennett Motors, et al.* This Court adopted a briefing schedule and conducted oral argument on

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March 11, 2015. Jeffrey G. Winter argued for Petitioner, Cathy Lewis argued for Respondent, and Anders Blewett argued for Amicus Curiae Montana Trial Lawyers Association. The matter having been submitted for decision, we grant the petition and exercise supervisory control.

¶ 2 The issue is whether the District Court properly granted a defense motion in limine to restrict the medical damages evidence admissible at trial, and granted summary judgment against Meek on that issue.

BACKGROUND

¶ 3 Judy Meek passed away on January 23, 2012, after a fall at a business premises on November 2, 2011. Sharon Meek, as personal representative of Judy's Estate (Meek), brought this action against the business where the fall happened, seeking damages for survival and wrongful death.

¶ 4 In the period between the fall and Judy's death, Judy's medical providers billed \$197,154.93 for her care. Judy was covered by Medicare and had supplemental coverage through Blue Cross/Blue Shield. Medicare and BCBS together paid a total of \$70,711.26 to Judy's medical providers. The District Court concluded that despite the billing from the medical providers, Judy had "no exposure or obligation to pay any charges beyond those actually paid pursuant to the Medicare rules and the insurance policy with Blue Cross/Blue Shield."

¶ 5 The issue in the present case arises from the District Court's decision on a pre-trial motion filed by one of the defendants, Pierce's Dodge City. The motion sought to limit Meek's medical expense recovery to the amounts paid to the providers by Medicare and BCBS, and to prevent Meek from presenting evidence to the jury as to the amounts actually billed by the medical providers. After briefing, the District Court concluded that while there was a split of authority nationally, the legal issue has been decided in Montana, citing this Court's decisions in *Conway v. Benefis Health System*, 2013 MT 73, 369 Mont. 309, 297 P.3d 1200 and *Newbury v. State Farm*, 2008 MT 156, 343 Mont. 279, 184 P.3d 1021.

¶ 6 The District Court determined that since Meek had no liability exposure to the medical care providers in excess of the amount paid by Medicare and BCBS, the only medical expense evidence that she could present to the jury were the amounts that had been paid to the providers. The District Court concluded that the amount actually billed by the providers was not representative of the reasonable value of the medical services provided to Judy and that the amount billed by the health care providers was inadmissible because it "is irrelevant" to any

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issue or to damages in the case.

¶ 7 The District Court granted the motion in limine to limit medical damage evidence, and granted summary judgment against Meek on that issue. Meek seeks supervisory control over that order.

STANDARD OF REVIEW

¶ 8 This Court exercises supervisory control in appropriate cases pursuant to Article VII, Section 2(2) of the Montana Constitution and Rule 17(a), M.R.App. P. Supervisory control is appropriate where the district court is proceeding upon a mistake of law which, if not corrected, would cause significant injustice for which appeal is an inadequate remedy. *Inter-Fluve v. Eighteenth Judicial District Court*, 2005 MT 103, ¶ 17, 327 Mont. 14, 112 P.3d 258.

[349 P.3d 495]

¶ 9 A motion in limine can seek to prevent or limit the introduction of evidence at trial, and the authority to grant or deny the motion rests in the inherent power of the district court to admit or exclude evidence so as to ensure a fair trial. *Hulse v. Department of Justice*, 1998 MT 108, ¶ 15, 289 Mont. 1, 961 P.2d 75. Where a decision on a motion in limine involves the exercise of discretion, this Court will not overturn the district court absent an abuse of discretion. *State v. Weldele*, 2003 MT 117, ¶ 41, 315 Mont. 452, 69 P.3d 1162. Where a decision on a motion in limine involves a conclusion of law or interpretation of statute, we review to determine whether the result is correct. *State v. Petersen*, 2011 MT 22, ¶ 8, 359 Mont. 200, 247 P.3d 731.

¶ 10 This Court reviews a district court's decision on summary judgment to determine whether it is correct, using the same criteria under Rule 56, M.R. Civ. P. *Pilgeram v. Greenpoint Mortgage*, 2013 MT 354, ¶ 9, 373 Mont. 1, 313 P.3d 839.

DISCUSSION

¶ 11 We do not address Meek's claim regarding the damages she may recover for medical expenses because that is an issue that can be adequately addressed on appeal if necessary. The only issue we address in this pretrial proceeding is whether the District Court properly limited the evidence that is admissible at trial regarding medical expenses.

¶ 12 The parties agree that Meek is entitled to damages "representing the reasonable value of the medical expenses for medical services obtained by Judy Meek." This is consistent with Montana law, which requires that in all cases damages must be reasonable, and that no party has a right to unconscionable and grossly oppressive damages that are contrary to substantial justice. Section 27-1-302, MCA ;

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Tidyman's Management Services v. Davis, 2014 MT 205, ¶ 40, 376 Mont. 80, 330 P.3d 1139.

¶ 13 The District Court concluded and the respondents argue that amounts billed by health care providers are "not a reliable or accurate indicator of the reasonable value of the services" because they are unreasonably inflated and few patients ever actually pay the billed amount. Respondents argue that the amount the providers actually receive from insurers or other benefit programs is a "far better indicator of the reasonable value of a provider's services." Further, they argue that allowing Meek to present evidence of medical bills in excess of what has been actually paid could lead to a windfall recovery.

¶ 14 The ultimate issue is whether Meek's medical bills are admissible at trial or whether, as the District Court held, they are irrelevant and inadmissible. All relevant evidence is admissible, except when otherwise provided. Rule 402, M.R. Evid. Relevant evidence is evidence that has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, M.R. Evid.;

Alexander v. Bozeman Motors, Inc., 2012 MT 301, ¶¶ 41–42, 367 Mont. 401, 291 P.3d 1120. Therefore, evidence should not be excluded simply because there may be contrary evidence or because it may be subject to impeachment. Although the District Court ruled that the amount of expenses billed is irrelevant when there is no claim for future medical expenses, medical bills received by a tort victim can be relevant evidence of issues such as the nature and severity of the injuries, and of the medical procedures and treatments that were required. *Chapman v. Mazda Motor of Am.*, 7 F.Supp.2d 1123, 1125 (D.Mont.1998).

¶ 15 The respondents' factual arguments regarding the nature and reliability of medical billings therefore do not provide adequate grounds for a pre-trial order excluding the evidence of the amounts billed by Meek's medical providers. If supported by competent evidence at trial, these arguments could provide matters of impeachment, and could affect the weight the jury might give to the evidence. Without more, however, these factual contentions do not justify exclusion of the evidence. The District Court's pretrial ruling to exclude all medical bills and grant summary judgment was not justified here, where Meek presented the affidavit of her

[349 P.3d 496]

primary physician that affirmed that the medical services represented in the billings were reasonably necessary to her care. The affidavit also affirmed that the amounts billed were reasonable, were the usual and customary rates for such treatment, and that they represented the reasonable value of the treatment.

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¶ 16 Ultimately, there is a factual dispute in the case over the nature of the bills presented by the medical providers and whether they represent a reasonable measure of the value of the services provided. The reasonableness of the medical bills as a measure of damages is a matter to be determined by the jury. *Burley v. Burlington*

Northern, 2012 MT 28, ¶ 91, 364 Mont. 77, 273 P.3d 825. The existence of genuine issues of material fact precludes summary judgment. *Redies v. Attorneys Liability Prot. Soc.*, 2007 MT 9, ¶ 26, 335 Mont. 233, 150 P.3d 930. This does not end the inquiry in this case, however, since the District Court also issued an order in limine, limiting the medical expense evidence that would be admissible at trial.

¶ 17 The District Court's order admitting only evidence of amounts the insurers paid to Meek's health care providers violates § 27–1–308, MCA. That statute, referred to as the collateral source rule, requires that a jury determine its award “without consideration of *any* collateral source.” Section 27–1–308(3), MCA (emphasis added). A collateral source, generally, is “a payment for something that is later included in a tort award and that is made to or for the benefit of a plaintiff or is otherwise available to the plaintiff.” Section 27–1–307(1), MCA. The statute provides, however, that in a separate post-trial proceeding the district court must reduce a jury's verdict in a personal injury case “by any amount paid or payable from a collateral source that does not have a subrogation right.” Section 27–1–308(3), MCA.

¶ 18 The District Court ruled that the “amount of the write-down” (the medical billings not covered by Medicare or BCBS) was not a benefit or was not otherwise “available” to Meek and therefore did not meet the definition of a collateral source under the statute. However, the payments made by Medicare to satisfy the providers' billings are clearly a collateral source. The District Court's order in this case, and now the Dissent, would not only require that these collateral source payments be considered by the jury, but would also make the collateral source payment conclusively determinative of Meek's medical damages. This is a clear violation of § 27–1–308(3), MCA. The statute prohibits the jury from considering any collateral sources and evidence of collateral source payments is not admissible on the issue of a personal injury claimant's medical expenses.

¶ 19 Respondents contend that allowing Meek to present evidence of the medical bills from her providers could result in a “windfall” recovery. This contention is addressed by § 27-1-308(1) and (3), MCA, which provides that after a jury verdict in favor of the plaintiff, the district court must hold a hearing and determine whether there were any collateral source payments to account for. If so, the recovery must

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be reduced by the amount paid or payable from a collateral source.

¶ 20 Contrary to the District Court's conclusions, the issues in this case were not decided in *Newbury* and *Conway*. Both of those cases involved contract disputes between insureds and insurers over application of insurance policy language, and neither case involved the admissibility of evidence in a personal injury action against a tortfeasor. Most significantly, neither case involved application of the collateral source statute, § 27-1-308, MCA. Neither case resolves the issues raised in the present case.

¶ 21 The parties have devoted considerable argument to identifying the majority and minority national rules on whether a tort claimant is limited to introducing evidence of medical expenses paid by third parties. *See, e.g., Bynum v. Magno*, 106 Hawai'i 81, 101 P.3d 1149 (2004). We do not decide the present case through application of national trends, but through application of the Montana Rules of Evidence and the Montana collateral source statute, § 27-1-308, MCA. Neither

[349 P.3d 497]

cases resolved the issues in the present case.¹

¶ 22 We reiterate that Montana law requires that damages be reasonable, § 27-1-302, MCA, and *Tidyman's*, ¶ 40, and that it is up to the jury to determine what is reasonable under the circumstances, *Burley*, ¶ 91. This statutory requirement of reasonable damages must be

construed along with the collateral source statute, § 27-1-308, MCA, so as to give effect to both. Section 1-2-101, MCA ; *Hanson v. Edwards*, 2000 MT 221, ¶ 19, 301 Mont. 185, 7 P.3d 419. Therefore, if at trial Meek introduces evidence of Judy Meek's medical bills the defendants may contest the reasonableness of those bills as a measure of damages. If so, evidence of the amount that Medicare pays to other health care providers for the same or similar service could be relevant to that issue, as long as there is no evidence or argument that Judy Meek was covered by Medicare or other insurance, or that Medicare or an insurer paid any part of her medical expenses. Those matters may be considered only by the District Court and only after a verdict, as provided in § 27-1-308(3), MCA.

¶ 23 Therefore,

¶ 24 IT IS ORDERED that the Petition for Writ of Supervisory Control is GRANTED.

¶ 25 IT IS FURTHER ORDERED that the District Court order on Pierce's Dodge City's motions in limine and summary judgment against

[379 Mont. 156]

Meek, as discussed above, are VACATED and this matter is remanded for further proceedings consistent with this Opinion and Order.

¶ 26 The Clerk of this Court is directed to provide copies of the Opinion and Order to counsel of record in Cascade County Cause No. BDV 12-0657, counsel for Amicus Curiae Montana Trial Lawyers Association and Montana Defense Trial Lawyers, and to the Honorable Jon A. Oldenburg, presiding District Judge.

We Concur: MICHAEL E WHEAT, PATRICIA COTTER, BETH BAKER, JAMES JEREMIAH SHEA and JIM RICE, JJ.

Justice LAURIE McKINNON, dissenting.

¶ 27 I dissent. The Court's decision is inconsistent with Montana's statutes defining damages, §§ 27-1-201, -202, MCA, and with our precedent, specifically *Newbury v. State Farm Fire & Casualty Insurance*, 2008 MT 156, 343 Mont. 279, 184 P.3d 1021, *Conway v. Benefis Health System*, 2013 MT 73, 369 Mont. 309, 297 P.3d 1200, and *Harris v. St. Vincent Healthcare*, 2013 MT 207, 371 Mont. 133, 305 P.3d 852. The Court allows a person injured by another person's tortious conduct to recover more than the actual amount she paid or for which she incurred liability for past medical care and expenses. In my opinion, sums beyond that actually expended are not damages. Fundamental principles of compensatory damages in tort actions compel the conclusion that a plaintiff may recover no more than her actual loss. Additionally, the collateral source rule is a rule of evidence that prevents a jury from knowing that the plaintiff has received payment from a source not associated with the tortfeasor; it therefore has no relevance in establishing the appropriate measure for determining the reasonableness of damages. The Court fails to observe this distinction.

¶ 28 In these proceedings, which do not include a claim for future medical expenses, there is no question about the appropriate measure of recovery: the Estate is entitled to recover the reasonable value of medical care and services reasonably required and attributable to the tort. "Damages must in all cases be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages contrary to substantial justice, no more than reasonable damages can be recovered." Section 27-1-302, MCA. Accordingly, a plaintiff may recover as economic damages *no more* than the reasonable value of the medical services received. The focus on "reasonable value" in § 27-1-302, MCA, is

[349 P.3d 498]

therefore a *limitation* on recovery, not an expansion of recovery beyond a plaintiff's actual loss or liability. The question here involves the

application of that measure; that is, whether the "reasonable value" measure of damages means

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that a plaintiff may recover sums beyond that actually expended.

¶ 29 In tort actions, damages are normally awarded for the purpose of compensating the plaintiff for the injury suffered, restoring her as nearly as possible to her former position or giving her some pecuniary equivalent. In Montana, compensatory damages are awarded to "redress the concrete loss that a plaintiff has suffered by reason of a defendant's wrongful conduct." *Seltzer v. Morton*, 2007 MT 62, ¶ 148, 336 Mont. 225, 154 P.3d 561. The law of torts "works to ensure that an award of damages restores an injured party as near as possible to the party's pre-tort position—no better, no worse." *Lampi v. Speed*, 2011 MT 231, ¶ 21, 362 Mont. 122, 261 P.3d 1000 (citing *Sunburst Sch. Dist. No. 2 v. Texaco, Inc.*, 2007 MT 183, ¶ 32, 338 Mont. 259, 165 P.3d 1079). We stated in *Sunburst* that an " 'injured party is to be made as nearly whole as possible—but not to realize a profit. Compensatory damages are designed to compensate the injured party for actual loss or injury—no more, no less.' " *Sunburst*, ¶ 40 (quoting *Burk Ranches v. State*, 242 Mont. 300, 307, 790 P.2d 443, 447 (1990)). Therefore, damages in a tort action "attempt[] primarily to put an injured person in a position as nearly as possible equivalent to his position prior to the tort." Restatement (Second) of Torts § 901 cmt. a (1979). Moreover, in "determining the measure of compensation, indemnity or restitution, the law of torts ordinarily does not measure its recovery as do the rules based upon unjust enrichment, on the benefit received by the defendant. This first purpose of tort law leads to compensatory damages." Restatement (Second) of Torts § 901 cmt. a.

¶ 30 Section 911 of the Restatement (Second) of Torts provides guidance for the measure of "reasonable value." While the measure of recovery for the costs of services rendered by a third party is ordinarily the reasonable value of those

services, “[if] ... the injured person paid less than the exchange rate, he can recover no more than the amount paid, except when the low rate was intended as a gift to him.” Restatement (Second) of Torts § 911 cmt. h. Section 911 articulates a rule, applicable to recovery of tort damages generally, which establishes that the “reasonable value” of services rendered is the exchange rate, and if a person has paid less, she can recover no more than the amount paid. Thus, a personal injury plaintiff may recover *the lesser* of (1) the amount paid or incurred for medical services, or (2) the reasonable value of the services.

¶ 31 This rule is likewise consistent with our statutes which allow compensation for the “detriment” proximately caused by the tortious conduct. Section 27-1-317, MCA, provides for recovery of damages measured by “the amount which will compensate for all the detriment

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proximately caused” by the tort. “Detriment” is defined as “a loss or harm suffered in person or property.” Section 27-1-201, MCA (emphasis added). The right to recover compensatory damages is defined by the “detriment” that a person suffers. Section 27-1-202, MCA. While the measure of damages for pain and suffering, emotional disturbances, and even future medical expenses necessarily must be left to the discretion of the jury, the measure of damages for past medical expenses must be the amount that was expended for the service, limited only by what was reasonably attributable to the tortious conduct.

¶ 32 *Newbury*, *Conway*, and *Harris* also establish that the reasonable value of medical expenses is limited to what was actually incurred. In *Newbury*, we determined that

while it was reasonable for Newbury to expect that his State Farm policies would pay his medical expenses (up to the policy limits of \$10,000.00) once the State Fund had paid all it was required to pay, it

was not reasonable for Newbury to expect to receive funds in excess of his medical expenses.

Newbury, 38. This Court, in *Newbury*, recognized that medical payments benefits are payable only for medical expenses, and when a plaintiff received full payment of his medical expenses and owed nothing more to his healthcare providers, a windfall would result

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if the plaintiff were to receive additional money in excess of his total medical expenses. *Newbury*, ¶¶ 39, 47. In *Conway*, we stated:

Here, the record shows that Benefis accepted Kemper's payment of \$1,866.29 as payment in full for the actual cost of Conway's medical treatment that resulted from the accident. Conway does not owe Benefis any remaining amount. Even though all of Conway's medical expenses have been paid, he still seeks to pocket \$1,203.55 in medical payments coverage benefits, representing the difference between Kemper's payment to Benefis and the TRICARE reimbursement rate. We disagree. Conway is no more entitled to pocket excess medical payments here than he would be under the circumstances in *Newbury*, or any other situation in which all of his medical expenses are paid by his insurer under its medical payments coverage.

Conway, ¶ 35.

¶ 33 We again explained in *Harris* that an injured party was not entitled to receive the difference in payment between the actual cost of medical treatment and the amount that the physician billed. *Harris*, ¶¶ 16-17. I concurred in *Harris*, noting that the plaintiffs had not suffered any

“detriment or legally cognizable damages necessary to

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support their claim.” *Harris*, ¶ 36 (McKinnon, J., concurring). Accordingly, it is my opinion that the decision reached today by the Court is inconsistent, indeed irreconcilable, with the foregoing precedent.

¶ 34 In these proceedings, Judy Meek did not incur liability for her providers’ full bills because at the time the charges were incurred, her providers had already agreed to accept a certain amount from both Medicare and Blue Cross/Blue Shield in exchange for their services. Having never incurred the full bill, the Estate cannot recover it in damages for economic loss. As a result of paying her premiums, Judy Meek obtained the benefit of medical services at a reduced rate. She would have paid these premiums and received the benefit of reduced rates regardless of any tortious conduct. Therefore, there is no need to determine the reasonable value of the services where, as here, the exact amount of expenses has been established by contract and has been satisfied.

¶ 35 Finally, the Court fails to appreciate the distinction between an evidentiary rule and an appropriate measure of reasonable value. The collateral source rule is a rule of evidence which prevents admission of evidence showing that the plaintiff has received payments from sources independent of the tortfeasor. The rule is premised upon the idea that there is minimal probative value in considering the actions of an unrelated third party when assessing the conduct of the tortfeasor and determining compensatory damages. In contrast, it would be very prejudicial to the plaintiff if a jury were to learn that the plaintiff has already been compensated. The collateral source rule also has a substantive aspect apart from its evidentiary basis. Based upon numerous policy considerations, the collateral source rule serves to protect payments conferred on the injured party from other sources unconnected to the tortfeasor from being credited

against the tortfeasor’s liability. Despite the Court’s conclusion to the contrary, Opinion, ¶ 18, a district court can apply a correct measure for reasonable value—the exchange rate—while still adhering to the collateral source rule that prevents the jury from knowing that the plaintiff has been otherwise compensated. A jury does not need to hear the source of the payment, or that a bill has been satisfied; all a jury need hear is the amount of the plaintiff’s past expense. The rule enunciated by the Court today would prove much more problematic for a district court to navigate.

¶ 36 Accordingly, I do not agree that medical bills, other than the amount actually paid and received, are “relevant evidence of issues such as the nature and severity of the injuries, and of medical

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procedures and treatments that were required.” Opinion, ¶ 14. These issues may be established through the testimony of treating physicians and health care providers and not by the admission of bills for amounts over and above what was received and accepted by Judy Meek’s medical providers. The desire to present higher bills in order to gain a larger recovery for other types of damages should not override fundamental principles of compensatory damages,

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our precedent, and Montana’s statutes. The evidence is simply not admissible for such a purpose and is not relevant, absent a claim for future medical expenses. Here, the amounts disallowed will not assist in developing a foundation for a life care plan or possible future medical procedures and needs. See *Willink v. Boyne USA, Inc.*, No. CV 12–74–BU–DLC, 2013 WL 5756157, at *2–3, 2013 U.S. Dist. LEXIS 152566, at *6–7 (D.Mont. Oct. 23, 2013).

¶ 37 For the foregoing reasons, I dissent from the Court’s decision.

Notes:

¹ Likewise, *Harris v. Billings Clinic*, 2013 MT 207, 371 Mont. 133, 305 P.3d 852, cited in the Dissent, neither involves in a direct action against a tortfeasor or application of § 27-1-308, MCA.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 67th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: Chair Mark Noland, on March 26, 2021 at 08:30 AM, in Room 172 Capitol

ROLL CALL

Members Present:

Rep. Mark Noland, Chair (R)
Rep. Edward Buttrey, Vice Chair (R)
Rep. Katie Sullivan, Vice Chair (D)
Rep. Willis Curdy (D)
Rep. Neil Duram (R)
Rep. Ross H. Fitzgerald (R)
Rep. Moffie Funk (D)
Rep. Steven Galloway (R)
Rep. Steve Gist (R)
Rep. Steve Gunderson (R)
Rep. Derek J. Harvey (D)
Rep. Denley M. Loge (R)
Rep. Ron Marshall (R)
Rep. Sara Novak (D)
Rep. Kerri Seekins-Crowe (R)
Rep. Katie Zolnikov (R)

Members Excused:

Rep. Kim Abbott (D)
Rep. Fred Anderson (R)
Rep. Andrea Olsen (D)
Rep. Rynalea Whiteman Pena (D)

Members Absent: None

Staff Present:

Jordee Bomgardner, Committee Secretary
Jameson Walker, Legislative Branch
Monte Cole, Remote Meeting Coordinator

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 76, 3/23/2021
Executive Action: SB 76, SB 251, SB 260
Committee Business: LC 2367

HEARING ON SB 76**Opening Statement by Sponsor:**

08:32:30 Sen. Daniel Salomon (R), SD 47, opened the hearing on SB 76, Revise the captive insurance regulatory and supervision account.

Proponents' Testimony:

08:35:44 Bob Biskupiak, Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI)

08:37:07 Rep. Olsen joined the meeting.

08:39:50 Aimee Grmoljez, Montana Captive Insurance Association (MCIA)

08:40:20 Rep. Gunderson left the meeting.

Opponents' Testimony: None**Informational Testimony:** None**Questions from Committee Members and Responses:**

08:41:26 Vice Chair Buttrey

08:42:13 Bob Biskupiak, CSI

08:42:22 Rep. Duram

08:44:30 Bob Biskupiak, CSI

08:45:04 Vice Chair Buttrey

08:46:00 Bob Biskupiak, CSI

08:46:11 Rep. Galloway

08:48:15 Bob Biskupiak, CSI

08:48:27 Vice Chair Buttrey

08:49:00 Chair Noland

Closing by Sponsor:

08:49:16 Sen. Salomon

08:50:56 Chair Noland

08:53:25 Vice Chair Sullivan

08:53:31 Chair Noland

08:53:35 Jameson Walker, Legislative Services Division (LSD)

08:54:24 Rep. Loge

08:54:30 Chair Noland

08:55:04 Rep. Marshall

08:55:15 Chair Noland

08:57:47 Rep. Funk

08:57:52 Jameson Walker, LSD

08:58:28 Chair Noland

08:58:54 Rep. Olsen

08:59:18 Chair Noland

08:59:34 Vice Chair Buttrey

08:59:44 Jameson Walker, LSD

09:00:24 Chair Noland

09:01:00 Vice Chair Sullivan

09:01:15 Jameson Walker, LSD

09:01:30 Vice Chair Sullivan
09:01:56 Chair Noland

09:02:08 Recess
10:06:31 Reconvened with Vice Chair Sullivan excused.

10:06:44 Chair Noland

EXECUTIVE ACTION ON SB 251

10:06:53 **Motion:** Rep. Buttrey moved that **SB 251 BE CONCURRED IN.**

10:07:30 **Motion:** Rep. Buttrey moved that **SB 251 BE AMENDED.**
[EXHIBIT\(buh60a01\)](#)

Discussion:

10:07:41 Vice Chair Buttrey
10:07:54 Jameson Walker, LSD

10:09:12 **Vote:** Motion carried unanimously by voice vote. Rep. Abbott, Rep. Anderson, Rep. Gunderson, Rep. Sullivan and Rep. Whiteman Pena voted by proxy.

10:09:43 **Motion:** Rep. Harvey moved that **SB 251 BE AMENDED.**
[EXHIBIT\(buh60a02\)](#)

Discussion:

10:10:31 Rep. Olsen
10:11:21 Vice Chair Buttrey

10:11:32 **Vote:** Motion failed 8-12 by roll call vote with Rep. Abbott, Rep. Curdy, Rep. Funk, Rep. Harvey, Rep. Novak, Rep. Olsen, Rep. Sullivan and Rep. Whiteman Pena voting aye. Rep. Abbott, Rep. Anderson, Rep. Gunderson, Rep. Sullivan and Rep. Whiteman Pena voted by proxy.

10:12:30 **Motion:** Rep. Buttrey moved that **SB 251 BE CONCURRED IN AS AMENDED.**

Discussion:

10:12:52 Rep. Olsen

10:15:26 **Vote:** Motion carried 12-8 by roll call vote with Rep. Abbott, Rep. Curdy, Rep. Funk, Rep. Harvey, Rep. Novak, Rep. Olsen, Rep. Sullivan and Rep. Whiteman Pena voting no. Rep. Abbott, Rep. Anderson, Rep. Gunderson, Rep. Sullivan and Rep. Whiteman Pena voted by proxy. Rep. Duram will carry the bill.

EXECUTIVE ACTION ON SB 76

10:16:22 **Motion/Vote:** Rep. Buttrey moved that **SB 76 BE CONCURRED IN.**
Motion carried unanimously by voice vote. Rep. Abbott, Rep. Anderson, Rep. Gunderson, Rep. Sullivan and Rep. Whiteman Pena voted by proxy. Rep. Buttrey will carry the bill.

EXECUTIVE ACTION ON SB 260

10:17:20 **Motion:** Rep. Buttrey moved that **SB 260 BE CONCURRED IN.**

10:17:53 **Motion:** Rep. Buttrey moved that **SB 260 BE AMENDED.**
EXHIBIT(buh60a03)

Discussion:

10:18:10 Jameson Walker, LSD

10:21:09 **Vote:** Motion carried 12-8 by roll call vote with Rep. Abbott, Rep. Curdy, Rep. Funk, Rep. Harvey, Rep. Novak, Rep. Olsen, Rep. Sullivan and Rep. Whiteman Pena voting no. Rep. Abbott, Rep. Anderson, Rep. Gunderson, Rep. Sullivan and Rep. Whiteman Pena voted by proxy.

10:21:58 **Motion:** Rep. Buttrey moved that **SB 260 BE CONCURRED IN AS AMENDED.**

Discussion:

10:22:23 Rep. Curdy

10:24:15 **Vote:** Motion carried 11-9 by roll call vote with Rep. Abbott, Rep. Curdy, Rep. Funk, Rep. Harvey, Rep. Novak, Rep. Olsen, Rep. Sullivan, Rep. Whiteman Pena and Rep. Zolnikov voting no. Rep. Abbott, Rep. Anderson, Rep. Gunderson, Rep. Sullivan and Rep. Whiteman Pena voted by proxy. Rep. Buttrey will carry the bill.

10:25:27 Chair Noland

10:26:00 Vice Chair Buttrey and Rep. Funk left the meeting.

Continued Committee Business on LC 2367

See Exhibit (1) on 2-25-2021

Pages 81-88:

10:26:21 Rep. Harvey
10:29:29 Chair Noland
10:29:35 Rep. Harvey
10:30:11 Rep. Curdy
10:31:42 Chair Noland
10:32:17 Rep. Curdy
10:32:24 Rep. Duram
10:33:27 Chair Noland
10:33:40 Rep. Novak
10:34:31 Chair Noland
10:34:43 Rep. Gist
10:34:55 Chair Noland
10:35:29 Rep. Duram
10:35:39 Chair Noland
10:35:45 Rep. Galloway
10:36:09 Rep. Harvey

10:38:18 Chair Noland
10:39:16 Rep. Curdy
10:39:41 Chair Noland
10:40:03 Rep. Harvey
10:41:02 Rep. Galloway
10:41:13 Rep. Harvey
10:41:20 Rep. Gist
10:41:37 Chair Noland
10:46:54 Rep. Harvey
10:47:09 Chair Noland
10:47:26 Jameson Walker, LSD
10:47:32 Chair Noland
10:48:02 Rep. Galloway
10:48:22 Jameson Walker, LSD
10:48:55 Rep. Harvey
10:49:48 Rep. Marshall
10:50:10 Rep. Harvey
10:57:17 Chair Noland
10:57:44 Rep. Loge
10:57:52 Chair Noland
10:57:58 Rep. Galloway
10:58:10 Rep. Loge
10:58:14 Rep. Harvey
10:58:22 Rep. Seekins-Crowe
10:58:33 Chair Noland
10:58:42 Rep. Loge
10:58:48 Chair Noland
10:58:55 Rep. Gist
10:59:20 Vice Chair Buttrey joined the meeting.
10:59:29 Rep. Harvey
11:01:12 Chair Noland
11:01:17 Vice Chair Buttrey
11:01:27 Rep. Harvey
11:01:41 Chair Noland
11:01:57 Rep. Marshall
11:02:20 Chair Noland
11:02:32 Rep. Curdy
11:03:59 Rep. Harvey
11:04:57 Chair Noland
11:05:25 Rep. Galloway
11:05:28 Rep. Marshall
11:05:41 Rep. Galloway
11:06:22 Rep. Curdy
11:06:37 Chair Noland
11:07:01 Vice Chair Buttrey
11:07:36 Rep. Gist
11:07:51 Vice Chair Buttrey
11:07:59 Chair Noland
11:08:06 Rep. Duram
11:08:11 Chair Noland

11:08:24 Vice Chair Buttrey

11:08:41 Chair Noland

Pages 88-103:

11:09:06 Rep. Loge

11:10:20 Vice Chair Buttrey

11:10:36 Rep. Loge

11:10:48 Rep. Duram

11:11:07 Rep. Loge

11:11:16 Vice Chair Buttrey

11:11:30 Chair Noland

11:15:33 Rep. Loge

11:15:51 Rep. Seekins-Crowe

11:16:17 Chair Noland

11:17:02 Rep. Seekins-Crowe

11:17:14 Rep. Loge

11:17:19 Chair Noland

11:17:33 Rep. Seekins-Crowe

11:17:45 Rep. Loge

11:21:42 Chair Noland

11:21:49 Rep. Loge

11:22:01 Chair Noland

11:22:19 Rep. Galloway

11:22:30 Chair Noland

11:22:39 Rep. Gist

11:22:47 Chair Noland

11:22:52 Rep. Curdy

11:23:02 Vice Chair Buttrey

11:23:24 Chair Noland

11:23:50 Rep. Loge

11:23:53 Vice Chair Buttrey left the meeting.

11:27:50 Rep. Gist

11:28:25 Rep. Loge

11:28:55 Rep. Gist left the meeting.

11:33:26 Rep. Fitzgerald and Rep. Novak left the meeting.

11:33:50 Rep. Curdy

11:34:00 Chair Noland

11:34:07 Rep. Curdy

11:34:59 Jameson Walker, LSD

11:35:28 Chair Noland

11:35:52 Rep. Galloway

ADJOURNMENT

Adjournment: 11:36:05

Jordee Bomgardner, Secretary

jb

Additional Documents:

EXHIBIT([buh60aad.pdf](#))

SENATE BILL NO. 251

INTRODUCED BY C. SMITH

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO DAMAGES IN LAWSUITS; PROVIDING THE MEASURE OF DAMAGES RECOVERABLE FOR MEDICAL SERVICES OR TREATMENT IN ACTIONS ARISING FROM BODILY INJURY OR DEATH; PROVIDING THAT DAMAGES IN ANY ACTION ARISING FROM BODILY INJURY OR DEATH EXCEEDING CERTAIN AMOUNTS ARE UNREASONABLE, UNCONSCIONABLE, AND GROSSLY OPPRESSIVE CONTRARY TO SUBSTANTIAL JUSTICE; ABROGATING THE COMMON LAW COLLATERAL SOURCE RULE, COURT DECISIONS, AND ALL PRIOR STATUTES APPLICABLE TO DETERMINING THE AMOUNTS RECOVERABLE BY PLAINTIFFS AS DAMAGES FOR MEDICAL SERVICES OR TREATMENT RELATING TO MEDICAL SERVICES OR TREATMENT; SETTING JURY CONSIDERATIONS FOR AWARDS OF MEDICAL SERVICES OR TREATMENT; PROVIDING DEFINITIONS; AMENDING SECTIONS 27-1-202, 27-1-302, 27-1-307, AND 27-1-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-202, MCA, is amended to read:

"27-1-202. Right to compensatory damages. Every person who suffers detriment from the unlawful act or omission of another may recover from the person in fault a compensation therefor for it in money, which is called damages. The measure of the damages recoverable from the person in fault for the reasonable value of medical services or treatment in actions arising from bodily injury or death is set forth in 27-1-308."

Section 2. Section 27-1-302, MCA, is amended to read:

"27-1-302. Damages to be reasonable. (1) Subject to subsection (2), Damages-damages must in all cases be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages contrary to substantial justice, no more than reasonable damages can be recovered.

(2) In any action arising from bodily injury or death, damages exceeding amounts provided in 27-1-308(2) are unreasonable, unconscionable, and grossly oppressive contrary to substantial justice.

Section 3. Section 27-1-307, MCA, is amended to read:

"27-1-307. Definitions. As used in 27-1-308 and this section:

(1) "Collateral source" means a payment for something that is later included in a tort award and that is made to or for the benefit of a plaintiff or is otherwise available to the plaintiff:

(a) for medical expenses and disability payments under the federal Social Security Act, any federal, state, or local income disability act, or any other public program;

(b) under any health, sickness, or income disability insurance or automobile accident insurance that provides health benefits or income disability coverage, and any other similar insurance benefits available to the plaintiff, except life insurance;

(c) under any contract or agreement of any person, group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except gifts or gratuitous contributions or assistance;

(d) any contractual or voluntary wage continuation plan provided by an employer or other system intended to provide wages during a period of disability; and

(e) any other source, except the assets of the plaintiff or of the plaintiff's immediate family if the plaintiff is obligated to repay a member of the plaintiff's immediate family.

(2) "Health care provider" includes hospitals, institutions, laboratories, doctors, physicians, optometrists, dentists, nurses, therapists, and any other medical or health care facilities, professionals or persons who diagnose, evaluate, treat, or otherwise deliver medical services or treatment to a plaintiff.

(3) (a) "Medical services or treatment" means any actions taken by a health care provider to observe, identify, diagnose, stabilize, address, ameliorate, correct, remedy, rehabilitate, manage, combat, or care for a plaintiff's injury, condition, disease, or disorder, or symptoms of a plaintiff's injury, condition, disease, or disorder.

(b) The term includes any equipment, facilities, medicines, drugs, prescriptions, devices, or products provided or applied to a plaintiff by a health care provider or consumed by a plaintiff at a health care provider's

Amendment - 3rd Reading - Requested by: Edward Buttrey

67th Legislature

Drafter: Jameson Walker, 406-444-3722

SB 251.2.1

1 direction.

2 ~~(2)(4)~~ "Person" includes individuals, corporations, associations, societies, firms, partnerships, joint-
3 stock companies, government entities, political subdivisions, and any other entity or aggregate of individuals.

4 ~~(3)(5)~~ (a) "Plaintiff" means a person who alleges to have sustained bodily injury, or on whose behalf
5 recovery for bodily injury or death is sought, or who would have a beneficial, legal, or equitable interest in a
6 recovery.

7 (b) The term includes:

8 (i) a legal representative;

9 (ii) a person with a wrongful death or surviving cause of action;

10 (iii) a person seeking recovery on a claim for loss of consortium, society, assistance, companionship,
11 or services; and

12 (iv) any other person whose right of recovery or whose claim or status is derivative of one who has
13 sustained bodily injury or death."

14

15 **Section 4.** Section 27-1-308, MCA, is amended to read:

16 **"27-1-308. Collateral source reductions in ~~Allowed recovery and permissible evidence --~~**
17 **reasonable value of medical or health care services or treatment -- actions arising from bodily injury or**
18 **death -- subrogation rights. (1)(A) The purpose of this section is to abrogate the common law collateral**
19 **source rule, court decisions, and all prior statutes applicable to determining the amounts recoverable by**
20 **plaintiffs as damages for medical services or treatment.**

21 **(B) THIS SECTION DOES NOT MODIFY DUTIES OWED IN ACCORDANCE WITH 33-18-201.**

22 **(2) In an action arising from bodily injury or death when the total award against all defendants is in**
23 **excess of \$50,000 and the plaintiff will be fully compensated for the plaintiff's damages, exclusive of court costs**
24 **and attorney fees, a plaintiff's recovery must be reduced by any amount paid or payable from a collateral**
25 **source that does not have a subrogation right, a plaintiff's recovery may not exceed amounts actually:**

26 **(a) paid by or on behalf of the plaintiff to health care providers that rendered reasonable and**
27 **necessary medical services or treatment to the plaintiff;**

28 **(b) necessary to satisfy charges that have been incurred and at the time of trial are still owing and**

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1 payable to health care providers for reasonable and necessary medical services or treatment rendered to the
2 plaintiff; and

3 (c) necessary to provide for any future reasonable and necessary medical services or treatment for
4 the plaintiff.

5 (2) — Before an insurance policy payment is used to reduce an award under subsection (1), the
6 following amounts must be deducted from the amount of the insurance policy payment:

7 (a) — the amount the plaintiff paid for the 5 years prior to the date of injury;

8 (b) — the amount the plaintiff paid from the date of injury to the date of judgment; and

9 (c) — the present value of the amount the plaintiff is obligated to pay to keep the policy in force for the
10 period for which any reduction of an award is made pursuant to subsection (3).

11 (3) The jury shall determine its award for the reasonable value of medical services or treatment
12 without consideration of any charges for medical services or treatment that were included on health care
13 providers' bills but resolved by way of contractual discount, price reduction, disallowance, gift, write-off, or
14 otherwise not paid collateral sources. After the jury determines its award, reduction of the award must be made
15 by the trial judge at a hearing and upon a separate submission of evidence relevant to the existence and
16 amount of collateral sources. Evidence ~~SUBJECT TO SUBSECTION (6), EVIDENCE~~ Evidence is admissible to
17 establish the reasonable value of medical services or treatment is limited to evidence identifying the amounts
18 actually:

19 at the hearing to show that the plaintiff has been or may be reimbursed from a collateral source that
20 does not have a subrogation right. If the trial judge finds that, at the time of hearing, it is not reasonably
21 determinable whether or in what amount a benefit from a collateral source will be payable, the judge shall:

22 (a) — order any person against whom an award was rendered and who claims a deduction under this
23 section to make a deposit into court of the disputed amount, at interest

24 (a) paid by or on behalf of the plaintiff, regardless of the source of payment, to satisfy the financial
25 obligation for medical services or treatment that the plaintiff received; and

26 (b) reduce the award by the amount deposited. The amount deposited and any interest on that
27 amount are subject to the further order of the court, pursuant to the requirements of this section. necessary to
28 satisfy the financial obligation for medical services or treatment rendered to the plaintiff that have been incurred

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1 but not yet satisfied. This evidence may not include any reference to sums that exceed the amount for which
2 the unpaid charges could be satisfied if submitted to any health insurance covering the plaintiff or any public or
3 government-sponsored health care benefit program for which the plaintiff is eligible, regardless of whether the
4 incurred but not yet satisfied charges have been or will be submitted to the plaintiff's health insurance or public
5 or government-sponsored health care benefit program. ~~If the plaintiff is not covered by any health insurance~~
6 ~~and is not eligible for any public or government-sponsored health care benefit program, evidence of the~~
7 ~~reasonable value of medical services or treatment incurred but not yet satisfied is limited to the medicare~~
8 ~~reimbursement rate in effect at the time the plaintiff's services or treatment occurred for the specific medical~~
9 ~~services or treatment rendered to the plaintiff.~~

10 (c) necessary to satisfy the financial obligation for any reasonable and necessary future medical
11 services or treatment of the plaintiff. This evidence may not include any reference to sums that exceed the
12 amount for which the future charges of health care providers could be satisfied if submitted to any health
13 insurance covering the plaintiff or any public or government-sponsored health care benefit program for which
14 the plaintiff is eligible. ~~If the plaintiff is not covered by any health insurance and is not eligible for any public or~~
15 ~~government-sponsored health care benefit program, evidence of the reasonable present value of any future~~
16 ~~reasonable and necessary medical services or treatment is limited to the medicare reimbursement rate in effect~~
17 ~~at the time of trial for the reasonable and necessary future medical services or treatment of the plaintiff.~~

18 (4) If prior to trial a defendant, a defendant's insurer or authorized representative, or any combination
19 of the three, pays any part of the financial obligation for medical services or treatment provided to the plaintiff,
20 then prior to the entry of judgment the court shall reduce the sum awarded to the plaintiff at trial by the amount
21 of the payment or other collateral source as defined in 27-1-307(1).

22 (5) Except for subrogation rights specifically granted by state or federal law, law or provided by
23 contract, there is no right to subrogation for any amount paid or payable to a plaintiff from a collateral source if
24 for an award is reduced by that amount under entered as provided in subsection (4) (2).

25 ~~(6) A HEALTH CARE PROVIDER MAY NOT ATTEMPT TO RECOVER MORE THAN THE AMOUNTS ALLOWED AS~~
26 ~~DAMAGES UNDER THIS SECTION FROM A PLAINTIFF.~~

28 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

Amendment - 3rd Reading - Requested by: Edward Buttrey

67th Legislature

Drafter: Jameson Walker, 406-444-3722

SB 251.2.1

1

2 **NEW SECTION.** **Section 6. Applicability.** [This act] applies to claims that accrue on or after [the
3 effective date of this act].

4

- END -

SENATE BILL NO. 251

INTRODUCED BY C. SMITH

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO DAMAGES IN LAWSUITS; PROVIDING THE MEASURE OF DAMAGES RECOVERABLE FOR MEDICAL SERVICES OR TREATMENT IN ACTIONS ARISING FROM BODILY INJURY OR DEATH; PROVIDING THAT DAMAGES IN ANY ACTION ARISING FROM BODILY INJURY OR DEATH EXCEEDING CERTAIN AMOUNTS ARE UNREASONABLE, UNCONSCIONABLE, AND GROSSLY OPPRESSIVE CONTRARY TO SUBSTANTIAL JUSTICE; ABROGATING THE COMMON LAW COLLATERAL SOURCE RULE, COURT DECISIONS, AND ALL PRIOR STATUTES APPLICABLE TO DETERMINING THE AMOUNTS RECOVERABLE BY PLAINTIFFS AS DAMAGES FOR MEDICAL SERVICES OR TREATMENT RELATING TO MEDICAL SERVICES OR TREATMENT; SETTING JURY CONSIDERATIONS FOR AWARDS OF MEDICAL SERVICES OR TREATMENT; PROVIDING DEFINITIONS; AMENDING SECTIONS 27-1-202, 27-1-302, 27-1-307, AND 27-1-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-202, MCA, is amended to read:

"27-1-202. Right to compensatory damages. Every person who suffers detriment from the unlawful act or omission of another may recover from the person in fault a compensation ~~therefor~~ for it in money, which is called damages. The measure of the damages recoverable from the person in fault for the reasonable value of medical services or treatment in actions arising from bodily injury or death is set forth in 27-1-308."

Section 2. Section 27-1-302, MCA, is amended to read:

"27-1-302. Damages to be reasonable. (1) Subject to subsection (2), ~~Damages-damages~~ must in all cases be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages contrary to substantial justice, no more than reasonable damages can be recovered.

Amendment - 3rd Reading - Requested by: Katie Sullivan

67th Legislature

Drafter: Jameson Walker, 406-444-3722

SB 251.2.2

1 the unpaid charges could be satisfied if submitted to any health insurance covering the plaintiff or any public or
2 government-sponsored health care benefit program for which the plaintiff is eligible, regardless of whether the
3 incurred but not yet satisfied charges have been or will be submitted to the plaintiff's health insurance or public
4 or government-sponsored health care benefit program. If the plaintiff is not covered by any health insurance
5 and is not eligible for any public or government-sponsored health care benefit program, evidence of the
6 reasonable value of medical services or treatment incurred but not yet satisfied is limited to the medicare
7 reimbursement rate in effect at the time the plaintiff's services or treatment occurred for the specific medical
8 services or treatment rendered to the plaintiff.

9 (c) necessary to satisfy the financial obligation for any reasonable and necessary future medical
10 services or treatment of the plaintiff. This evidence may not include any reference to sums that exceed the
11 amount for which the future charges of health care providers could be satisfied if submitted to any health
12 insurance covering the plaintiff or any public or government-sponsored health care benefit program for which
13 the plaintiff is eligible. If the plaintiff is not covered by any health insurance and is not eligible for any public or
14 government-sponsored health care benefit program, evidence of the reasonable present value of any future
15 reasonable and necessary medical services or treatment is limited to the medicare reimbursement rate in effect
16 at the time of trial for the reasonable and necessary future medical services or treatment of the plaintiff.

17 (4) If prior to trial a defendant, a defendant's insurer or authorized representative, or any combination
18 of the three, pays any part of the financial obligation for medical services or treatment provided to the plaintiff,
19 then prior to the entry of judgment the court shall reduce the sum awarded to the plaintiff at trial by the amount
20 of the payment or other collateral source as defined in 27-1-307(1).

21 (5) Except for subrogation rights specifically granted by state or federal law, law or provided by
22 contract, there is no right to subrogation for any amount paid or payable to a plaintiff from a collateral source if
23 for an award is reduced by that amount under entered as provided in subsection (4) (2).

24 ~~(6) A HEALTH CARE PROVIDER MAY NOT ATTEMPT TO RECOVER MORE THAN THE AMOUNTS ALLOWED AS~~
25 ~~DAMAGES UNDER THIS SECTION FROM A PLAINTIFF.~~

26 ~~(6) The provisions of this section do not apply if a plaintiff requests that a health care provider submit~~
27 ~~the charges to the plaintiff's health insurance or public or government-sponsored health care benefit program~~
28 ~~and, within 45 days of the request, the health care provider has not complied with the plaintiff's request, to the~~

Amendment - 3rd Reading - Requested by: Katie Sullivan

67th Legislature

Drafter: Jameson Walker, 406-444-3722

SB 251.2.2

1 extent permitted by law.
2 (7) For care provided to a plaintiff prior to a final settlement or judgment, a health care provider may
3 not attempt to recover from the plaintiff more than the amounts allowed as damages under this section."
4

5 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.
6

7 NEW SECTION. **Section 6. Applicability.** [This act] applies to claims that accrue on or after [the
8 effective date of this act].
9

- END -



2021 Session

Additional Documents

May include the following:

- **Business Report**
- **Roll Call -Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports**
- **Roll Call Votes**
- **Informational Item's**
- **Witness Statements**
- **Visitor Register**
- **Any other type of documents such as:**
 - Petitions, Pamphlets, Leaflets, Brochures, Emails, all documents given to Committee Secretary 24 hours after the meeting adjourned.**

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives, 225 N. Roberts, Helena, MT 59620-1201

Phone (406) 444-4774.

E-Document Specialist: Susie Hamilton SHamilton@mt.gov

BUSINESS REPORT
MONTANA HOUSE OF REPRESENTATIVES
67th LEGISLATURE - REGULAR SESSION
HOUSE BUSINESS AND LABOR COMMITTEE

Date: Friday, March 26, 2021
Place: Capitol

Time: 08:30 AM
Room: 172

BILLS and RESOLUTIONS HEARD:

SB 76 - Revise the captive insurance regulatory and supervision account - Sen. Daniel Salomon (R)

EXECUTIVE ACTION TAKEN:

SB 76 - Be Concurred In
SB 251 - Be Concurred In As Amended
SB 260 - Be Concurred In As Amended

Comments:

Committee Business on LC 2367



REP. Mark Noland, Chair



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

BUSINESS & LABOR COMMITTEE

ROLL CALL

DATE: 3-26-2021

NAME	PRESENT	ABSENT/EXCUSED
VICE CHAIR SULLIVAN	✓	
REP. CURDY	✓	
REP. OLSEN		✓
REP. FUNK	✓	
REP. ABBOTT		✓
REP. WHITEMAN PENA		✓
REP. FITZGERALD	✓	
REP. ANDERSON		✓
REP. GALLOWAY	✓	
REP. LOGE	✓	
REP. SEEKINS-CROWE	✓	
REP. DURAM	✓	
REP. MARSHALL	✓	
REP. NOVAK	✓	
REP. GIST	✓	
REP. GUNDERSON	✓	
REP. ZOLNIKOV	✓	
REP. HARVEY	✓	
VICE CHAIR BUTTREY	✓	
CHAIR NOLAND	✓	

20 MEMBERS



HOUSE STANDING COMMITTEE REPORT

March 26, 2021

Page 1 of 1

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **Senate Bill 76** (second house second reading copy -- tan) **be concurred in.**

Signed: *Mark Noland*
Representative Mark Noland, Chair

To be carried by Representative Edward Buttrey

- END -

Committee Vote:

Yes 20, No 0

Fiscal Note Required ☐

SB0076001SC12545.hlc

3-26-21
TR 11:59pm
(F)



HOUSE STANDING COMMITTEE REPORT

March 26, 2021

Page 1 of 1

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **Senate Bill 251** (second house second reading copy -- tan) **be concurred in as amended.**

Signed: Mark Noland
Representative Mark Noland, Chair

To be carried by Representative Neil Duram

And, that such amendments read:

1. Page 4, line 16.

Following: "**Evidence**"

Strike: "**SUBJECT TO SUBSECTION (6), EVIDENCE**"

INSERT: "**EVIDENCE**"

2. PAGE 5, LINE 4 THROUGH LINE 8.

FOLLOWING: "**IF THE PLAINTIFF**" ON LINE 4 THROUGH "**THE PLAINTIFF.**" ON LINE 8

3. PAGE 5, LINE 13 THROUGH LINE 16.

STRIKE: "**IF THE PLAINTIFF**" ON LINE 13 THROUGH "**THE PLAINTIFF.**" ON LINE 16

4. PAGE 5, LINE 24 THROUGH LINE 25.

STRIKE: SUBSECTION (6) IN ITS ENTIRETY

- END -

Committee Vote:

Yes 12, No 8

Fiscal Note Required ☐

SB0251001SC18716.hlc

3.29.21
R 10:24AM
②



HOUSE STANDING COMMITTEE REPORT

March 26, 2021

Page 1 of 2

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **Senate Bill 260** (second house second reading copy -- tan) be concurred in as amended.

Signed: Mark Noland
Representative Mark Noland, Chair

To be carried by Representative Edward Buttrey

And, that such amendments read:

1. Page 2, line 8.
Following: "85-2-102;"
Strike: "and"

2. Page 2, line 9.
Following: "property"
Insert: "; and
(k)mineral rights"

3. Page 2.
Following: line 20
Insert: "(4) The power or authority of a local government to lawfully enact valid zoning, subdivision, or other land use regulations or ordinances that are required by law or that are necessary to protect documented public health, welfare, or safety impacts is set forth in Title 76, chapters 1 through 4, but is still subject to the 25% or greater diminution of value set forth in subsection (2)."

Renumber: subsequent subsections

4. Page 2, line 24 through line 26.
Strike: "the" on line 24 through "impacts" on line 26
Insert: "Montana law relative to primacy of the mineral estate, cannot be construed to limit access to or development of the mineral estate, and may not prevent the complete use, development, or recovery of any mineral"

5. Page 3, line 1.
Following: "(2)"
Insert: ":
(i)"

Committee Vote:

Yes 11, No 9

Fiscal Note Required ☐

SB0260001SC12545.hlc

3.26.21
DR 1507m
(P)

6. Page 3, line 2.

Strike: "(4)(a)"

Insert: "(5)(a); or

(ii) by a party who is not the applicant or holder of a permit, license, approval or authorization under Title 75 or Title 82"

7. Page 3, line 11.

Strike: "OR"

8. PAGE 3, LINE 12.

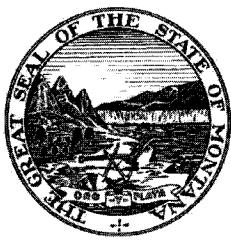
FOLLOWING: "(D)"

INSERT: "SITUATIONS IN WHICH GOVERNMENT ACTION GRANTS ADDITIONAL RIGHTS OR PRIVILEGES WITHIN THE OVERALL COMMERCIAL MARKETPLACE TO THE DETRIMENT OF COMPETING PROPERTY INTERESTS;

(E) LAND USE DECISIONS THAT CAUSE A DECREASE IN VALUE OF A NEIGHBORING PARCEL OF LAND; OR

(F)"

- END -



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

BUSINESS & LABOR COMMITTEE

ROLL CALL VOTE

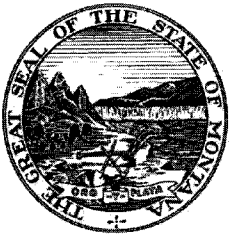
BILL NUMBER SB 251

DATE 3-26-2021

MOTION Be Amended 251.2.2

NAME	AYE	NO	PROXY
VICE CHAIR SULLIVAN	✓		✓
REP. CURDY	✓		
REP. OLSEN	✓		
REP. FUNK	✓		
REP. ABBOTT	✓		✓
REP. WHITEMAN PENA	✓		✓
REP. FITZGERALD		✓	
REP. ANDERSON		✓	✓
REP. GALLOWAY		✓	
REP. LOGE		✓	
REP. SEEKINS-CROWE		✓	
REP. DURAM		✓	
REP. MARSHALL		✓	
REP. NOVAK	✓		
REP. GIST		✓	
REP. GUNDERSON		✓	✓
REP. ZOLNIKOV		✓	
REP. HARVEY	✓		
VICE CHAIR BUTTREY		✓	
CHAIR NOLAND		✓	

20 MEMBERS



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

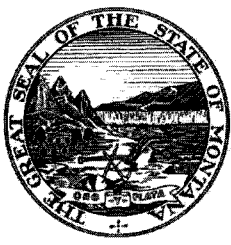
BUSINESS & LABOR COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB 251 DATE 3-26-2021
MOTION Be concurred In As Amended

NAME	AYE	NO	PROXY
VICE CHAIR SULLIVAN		✓	✓
REP. CURDY		✓	
REP. OLSEN		✓	
REP. FUNK		✓	
REP. ABBOTT		✓	✓
REP. WHITEMAN PENA		✓	✓
REP. FITZGERALD	✓		
REP. ANDERSON	✓		✓
REP. GALLOWAY	✓		
REP. LOGE	✓		
REP. SEEKINS-CROWE	✓		
REP. DURAM	✓		
REP. MARSHALL	✓		
REP. NOVAK		✓	
REP. GIST	✓		
REP. GUNDERSON	✓		✓
REP. ZOLNIKOV	✓		
REP. HARVEY		✓	
VICE CHAIR BUTTREY	✓		
CHAIR NOLAND	✓		

20 MEMBERS



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

BUSINESS & LABOR COMMITTEE

ROLL CALL VOTE

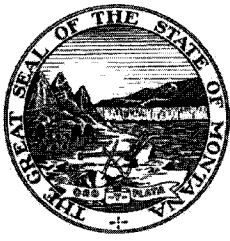
BILL NUMBER SB 260

DATE 3-26-2021

MOTION Be Amended 260.3.1

NAME	AYE	NO	PROXY
VICE CHAIR SULLIVAN		✓	✓
REP. CURDY		✓	
REP. OLSEN		✓	
REP. FUNK		✓	
REP. ABBOTT		✓	✓
REP. WHITEMAN PENA		✓	✓
REP. FITZGERALD	✓		
REP. ANDERSON	✓		✓
REP. GALLOWAY	✓		
REP. LOGE	✓		
REP. SEEKINS-CROWE	✓		
REP. DURAM	✓		
REP. MARSHALL	✓		
REP. NOVAK		✓	
REP. GIST	✓		
REP. GUNDERSON	✓		✓
REP. ZOLNIKOV	✓		
REP. HARVEY		✓	
VICE CHAIR BUTTREY	✓		
CHAIR NOLAND	✓		

20 MEMBERS



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

BUSINESS & LABOR COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB 260

DATE 3-26-2021

MOTION Be concurred In As Amended

NAME	AYE	NO	PROXY
VICE CHAIR SULLIVAN		✓	✓
REP. CURDY		✓	
REP. OLSEN		✓	
REP. FUNK		✓	
REP. ABBOTT		✓	✓
REP. WHITEMAN PENA		✓	✓
REP. FITZGERALD	✓		
REP. ANDERSON	✓		✓
REP. GALLOWAY	✓		
REP. LOGE	✓		
REP. SEEKINS-CROWE	✓		
REP. DURAM	✓		
REP. MARSHALL	✓		
REP. NOVAK		✓	
REP. GIST	✓		
REP. GUNDERSON	✓		✓
REP. ZOLNIKOV		✓	
REP. HARVEY		✓	
VICE CHAIR BUTTREY	✓		
CHAIR NOLAND	✓		

20 MEMBERS



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 67TH LEGISLATIVE SESSION

I request to be excused from the Business and Labor Committee.

I desire to leave my proxy vote with Rep. HARVEY.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
SB 251	Amendment 251.2.1	X	
SB 251	Amendment 251.2.2	X	
SB 251	DO CONCUR		X
SB 76	DO CONCUR	X	
SB 260	Amendment 260.3.1		X
SB 260	DO CONCUR		X

BILL	MOTION (Include AMENDMENT #)	AYE	NO

I authorize my vote to be matched with that of Rep. HARVEY
for any amendments proposed on this date.

Rep. VIA E-MAIL REP. SULLIVAN 3/26/21
(Signature) (Print Name) (Meeting Date)



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 67TH LEGISLATIVE SESSION

I request to be excused from the BUSINESS and LABOR Committee.

I desire to leave my proxy vote with Rep. HARVEY.

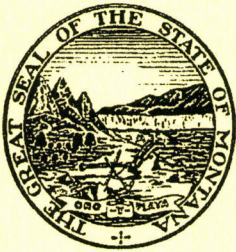
PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
SB 251	Amendment 251.2.1	X	
SB 251	Amendment 251.2.2	X	
SB 251	DO CONCUR		X
SB 76	DO CONCUR	X	
SB 260	Amendment 260.3.1		X
SB 260	DO CONCUR		X

BILL	MOTION (Include AMENDMENT #)	AYE	NO

I authorize my vote to be matched with that of Rep. HARVEY
for any amendments proposed on this date.

Rep. VIA E-MAIL REP. ABBOTT 3/26/21
(Signature) (Print Name) (Meeting Date)



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES
AUTHORIZED
COMMITTEE PROXY
67TH LEGISLATIVE SESSION

I request to be excused from the Business and Labor Committee.

I desire to leave my proxy vote with Rep. HARVEY.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
SB 251	Amendment 251.2.1	X	
SB 251	AMENDMENT 251.2.2	X	
SB 251	AMENDMENT DO CONCUR		X
SB 76	DO CONCUR	X	
SB 260	Amendment 260.3.1		X
SB 260	DO CONCUR		X

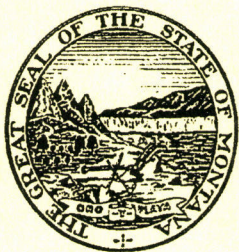
BILL	MOTION (Include AMENDMENT #)	AYE	NO

I authorize my vote to be matched with that of Rep. HARVEY
for any amendments proposed on this date.

Rep. Annalea Whiteman
(Signature) Peña

Rep. Whiteman Pena
(Print Name)

3/26/21
(Meeting Date)



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES
AUTHORIZED
COMMITTEE PROXY
67TH LEGISLATIVE SESSION

I request to be excused from the Business and Labor Committee.

I desire to leave my proxy vote with Rep. Buttry

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
SB257	Amend 251.2.1	X	
SB251	Amend 251.2.2		X
SB251	Do Concur as Amended	X	
SB76	Do Concur	X	
SB260	Amend 260.3.1	X	
SB260	Do Concur as amended	X	

BILL	MOTION (Include AMENDMENT #)	AYE	NO

I authorize my vote to be matched with that of Rep. _____
for any amendments proposed on this date.

Rep. _____

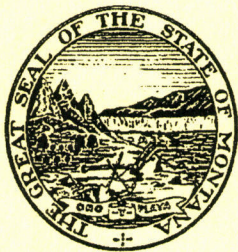
(Signature)

Rep. Gunderson

(Print Name)

3/26/21

(Meeting Date)



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES
AUTHORIZED
COMMITTEE PROXY
67TH LEGISLATIVE SESSION

I request to be excused from the Business and Labor Committee.

I desire to leave my proxy vote with Rep. Loge Butkey.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
SB251	Amend 251.2.1	X	
SB251	Amend 251.2.2		X
SB251	Do Concur as Amended	X	
SB76	Do Concur	X	
SB260	Amend 260.3.1	X	
SB260	Do Concur as Amended	X	

BILL	MOTION (Include AMENDMENT #)	AYE	NO

I authorize my vote to be matched with that of Rep. _____
for any amendments proposed on this date.

Rep. Fred Anderson Rep. Anderson
(Signature) (Print Name) (Meeting Date)

F. Anderson

**MONTANA House of Representatives
Visitors Register
HOUSE BUSINESS AND LABOR COMMITTEE**

Friday, March 26, 2021

SB 76 - Revise the captive insurance regulatory and supervision account

Sponsor: **Sen. Daniel Salomon (R)**

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.